COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

JOINT COMMITTEE ON THE AUSTRALIAN CRIME COMMISSION

Reference: Future impact of serious and organised crime on Australian society

FRIDAY, 6 JULY 2007

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JOINT STATUTORY COMMITTEE ON THE

AUSTRALIAN CRIME COMMISSION

Friday, 6 July 2007

Members: Senator Ian Macdonald *(Chair)*, Mr Kerr *(Deputy Chair)*, Senators Bartlett, Mark Bishop, Parry and Polley and Mrs Gash, Mr Hayes, Mr Richardson and Mr Wood

Members in attendance: Senators Mark Bishop, Ian Macdonald and Parry and Mr Hayes

Terms of reference for the inquiry:

To inquire into and report on:

The future impact of serious and organised crime on Australian society.

With particular reference to:

a. Future trends in serious and organised crime activities, practices and methods and their impact on Australian society;

b. Strategies for countering future serious and organised crime;

c. The economic cost of countering future organised crime at a national and state and territory level; and

d. The adequacy of legislative and administrative arrangements, including the adequacy of cross-jurisdictional databases, to meet future needs.

WITNESSES

Committee met at 9.03 am

CROMBIE, Mr Darren, General Manager, Aviation Security Operations, Department of Transport and Regional Services

HANNA, Mr Graham Wayne, Section Head, Identity Security Section, Supply Chain and Information Security Branch, Office of Transport Security, Department of Transport and Regional Services

PARKINSON, Mr Jeremy, Director, Maritime Security Policy, Department of Transport and Regional Services

RETTER, Mr Paul, Executive Director, Office of Transport Security, Department of Transport and Regional Services

WRAITH, Mr Jonathan, Section Head, Supply Chain Security, Depart

.ment of Transport and Regional Services

CHAIR (Senator Ian Macdonald)—Welcome. As you gentlemen know the rules of committee hearings—from sad experience!—you would be aware these hearings are protected by parliamentary privilege. If there is anything that you would like to tell us that is of a sensitive nature and should not be made public, we can go in camera should you request it and should the committee so determine. You are aware that you are not required to give opinions on matters of policy, and you will be given the opportunity to refer questions to more senior officers or to the minister if that is required. We have a number of questions to ask you on different issues that have been raised during other hearings, and we do thank you for your attendance here today. I appreciate you are busy. Would you like to make an opening statement before we ask questions?

Mr Retter—Given that this is our first time before the committee, I thought I might put some context around what the Office of Transport Security does—its role and task—in a very succinct way and then provide some specific comments about the transport security regime as it pertains, in particular, to the aviation sector.

The Office of Transport Security is responsible for a number of things, including the development of a targeted and nationally consistent approach to transport security for the aviation, maritime and offshore oil and gas industries. It is responsible for providing advice and briefing to the Australian government on transport security. It is responsible for the provision of regulations that reduce known risks to aviation, maritime and offshore oil and gas sectors for the Australian travelling public. It is responsible for the analysis of information from intelligence sources, taking measures that mitigate threats and risks. It also operates the Office of Transport Security Operations Centre to assist and advise transport operators. It also undertakes regular checks to make sure that industry participants follow their agreed security plans so that operators and the public have confidence in the transport security system. Finally, it is responsible for the provision and the development of policy plans and regulations in consultation with key government and industry partners that help with Australia's security arrangements.

Turning now to comments pertaining to the transport security regime in the aviation sector, I would like to touch first on the issue of criminality and unlawful acts. The Australian aviation security regime is primarily focused on ensuring that there is adequate mitigation of risks to the aviation industry that are generated by the threat of transnational terrorism. While recognising that terrorism is another form of crime, criminal activity other than terrorism is different in nature to terrorism. Criminals are generally inclined to protect the operating environment in which their illegal activities are successfully completed. Criminal activity highlights aviation security vulnerabilities which might be accessible to terrorists with the intent and capability of perpetuating acts with catastrophic and irreversible consequences.

A link between criminal activity and terrorism was identified by the Rt Hon. Sir John Wheeler in his review of airport security and policing in Australia. Wheeler identified two aspects to that link: first, the possibility that vulnerabilities can be exploited by criminals to get illicit goods into the airstream and that those vulnerabilities could also be exploited by terrorists; and, second, that any criminals or criminal associates working in the airstream might be coerced by terrorists.

As I am sure you are aware, Wheeler recommended that the Australian Crime Commission establish a unit on aviation and airport criminality for the provision of intelligence on the nature and extent of criminality in the aviation sector. Since the establishment of that unit, the ACC has provided three strategic intelligence reports to input into the DOTARS aviation security quarterly reports, as recommended by the Wheeler review. The Australian Crime Commission has also produced a number of additional intelligence reports from a review into criminal activities in the aviation sector. The Australian Crime Commission is also undertaking a similar review of criminal activities of the maritime sector.

The Australian Crime Commission has identified a number of vulnerabilities; however, the nature and extent of these vulnerabilities cannot be shared with this committee in this forum due to the protected nature of the ACC reports. I would defer to the Australian Crime Commission to discuss their reports this afternoon, unless the committee has specific questions pertaining to those reports, in which case I would ask that we do that in camera. However, the department and OTS, in particular, continue to work with the Australian Crime Commission and other law enforcement agencies in addressing the identified vulnerabilities. That is the extent of my opening statement. We would be happy to take questions.

CHAIR—Thank you, Mr Retter. When was Sir John Wheeler's report?

Mr Retter—In September, 2005.

CHAIR—Is there a review of terrorism-criminal matters as they continue to evolve? Do you expect the ACC's unit at the airports to undertake an ongoing review of what Wheeler started?

Mr Retter—Certainly the Australian Crime Commission's investigative tasking in the aviation sector is part of the ongoing updating and analysis of what is occurring in the aviation sector. We conduct continual reviews of the threats, risks and vulnerabilities that exist in the aviation sector. Particularly in the case of terrorism, we are dealing with very smart people who are adaptive and who evolve techniques, as we saw in August last year and just recently in Glasgow. Therefore, the reviews that we undertake, which are intelligence led—whether it is criminal intelligence or national security related intelligence—drive us to then look at the

vulnerabilities that exist across the aviation sector and at the mitigation measures that we need to put into effect, whether they are in the form of enhanced or changed regulation or whether they are day-to-day operational security measures that can be put in place by the owners and operators of those critical pieces of infrastructure.

CHAIR—We have had anecdotal evidence from responsible sources which indicates—according to my precis of it, which may not be precise—that there is still a lot of laxness at airports, particularly among baggage handlers. I am sure you have heard this comment before. It was suggested to us yesterday that the security operations at airports are run by the commercial companies themselves, which, as I think you mentioned in your opening statement, are subject to audit by your unit. But there is anecdotal evidence of cement truck drivers not being available for work and so they get a mate to drive the truck into the airport. There does not seem to be much security about the operation. As I said, it is anecdotal. I am not giving you specific examples, and perhaps it is too easy for anecdotal comments to be made. Could you describe, in general, how the security at airports works in relation to terrorism and criminal activities. Obviously, terrorism is the main focus of your work these days and to a lesser extent criminal activities. We are all aware of the allegations made by Schapelle Corby about security. Could you give us some idea of that sort of scenario?

Mr Retter—I will give you a brief rundown on the regulations and the policy framework we use to drive the audit and compliance work that we undertake as the regulator. I will then defer to Mr Crombie, who might want to make some additional points. Since 2005, we have had a new framework in place that imposes a range of obligations on the aviation security participants in the aviation sector here, including the requirement to prepare and implement transport security programs. The transport security program is a preventative security program that sets out security measures and procedures to be implemented to address identified risks and to safeguard against acts of unlawful interference with aviation. In addition, aviation security participants have obligations, including screening, background checking and controlling access into designated security areas. Compliance with those transport security programs as well as the act and regulations that establish those requirements is monitored by us through a comprehensive audit and compliance program. Also, each industry participant is required to have in place internal audit procedures approved by the department.

I will list a few statistics to give you some idea of the regime that we undertake. We are currently compiling our statistics for the last financial year; however, up until the end of the financial year 2005-06, we conducted the following sorts of audit and compliance activities: 794 airline and airport audits; 330 regulated air cargo agent inspections; 39 major airport audits, including the designated airports—these used to be known as CTFR airports—and all other airports that conduct passenger screening; visits to and inspections of most of the other 148 security-controlled Australian airports; over 400 inspections of domestic airline operations; and 171 inspections of international airlines operating throughout Australia. In terms of security exercises, we have worked with industry and other stakeholders, including law enforcement agencies, to test preventative security arrangements through various exercises.

CHAIR—Can you explain to the committee exactly what the audits involve and what the visits and inspections involve. Do you have trained investigators who turn up unannounced to check people's passports or IDs or how they got them? Do you do that sort of thing?

Mr Retter—We certainly have transport security inspectors. We have—and Mr Crombie will correct me if I am slightly at odds—about 40 inspectors who work in the aviation sector across Australia. I will let him give you an idea of the nature of their duties and what those audits and inspections entail.

Mr Crombie—The transport security inspectors are employees of the department. They are generally based in our state offices in Brisbane, Sydney, Perth, Melbourne and Darwin. Their roles are to do what you alluded to—the drop-in-unannounced visits. Principally their work is focused around audit of compliance against the airport or airline transport security program, which is effectively the document that the airport or airline binds itself to. It is developed and then approved by the secretary of the department or their delegate. A lot of their work is about the assessment of and the adequacy of those documents and then looking at the operations of the airport or airline to see whether they are acting in accordance with what they said they were going to do. In addition, in the aviation space, under the regulatory framework there is a whole raft of other activities that the airports and airlines are required to undertake, and our inspectors would be looking for compliance with that. If we have an issue that we think might be systemic, we are quite willing to send our inspectors out on targeted investigative work.

We are currently going through a process of having all of those people qualified to a certificate IV standard in government audit—or words to that effect. A number of them come from police backgrounds so there are a number of them with good investigative skills, but we do not employ investigators per se. Their activities go from the audit and compliance work, which is really about seeing whether or not the industry is complying with its program and with the act. Then there are visits and tests. We would consider a test to be an unannounced arrival at an airport and then a test of the security system, principally around things like the screening points. Our inspectors will undertake tests involving trying to get what we call a test piece through the system. If the screeners do not pick it up, there is an instant declaration that they are an inspector and they would then seek to resolve why the item was not picked up. So there is that kind of systems testing. It is a graded system down from the formal annual audit through to the spot visits.

A lot of what our inspectors do is about capacity building. We are of the view that a lot of the regulatory outcome is achieved by working with industry to help them improve the way they do business, so it is not so much a sanctions based audit compliance regime. I would categorise it as a capacity-building regime.

CHAIR—There has been concern expressed to us that expecting middle and lower order airline employees to screen their mates coming through in a cement truck is not terribly satisfactory. Whilst I accept that the airlines and their senior management may well agree to plans and be serious about them, as it goes down the level to the operators how can you be assured that these plans that are prepared and approved by your department—and I am sure they are very appropriate—are actually working and being applied at ground level?

Mr Crombie—Could I disentangle that a little bit?

CHAIR—Sure.

Mr Crombie—Perhaps one way of dealing with this is to actually go back to the question you asked before about the hierarchical arrangement for delivering security outcomes at airports. That might help to explain how this dovetails together. As you would be aware, the Commonwealth divested itself of all of the major airports, so the principal airports are now all privately owned except for Cairns airport, which is a state government instrumentality. For the principal security activities that we would see around passenger and baggage screening and the like, we establish what is called a screening authority. We issue an instrument which says that, for example, at Sydney airport, the screening authority for the international terminal is the Sydney Airport Corporation; at terminal 2, which is the Virgin terminal, it is also the Sydney Airport Corporation; and at the terminal 3, the Qantas terminal, the screening authority is Qantas. They are effectively the ones that are legally charged with ensuring a security outcome for the terminal. They then set in place very complex contracts to buy manpower from the likes of SNP or ISS.

CHAIR—I accept that, but many people would suggest that that is like getting Mayne Nickless to investigate murders—not getting state police to do it but hiring some private, money focused company and putting them in charge of it. I mean, if they are in business their purpose is to make money for their shareholders. I will redirect my question. I am sorry to interrupt you. I have a general idea of how that works, but we just want to know how government 'police' are ensuring security—rather than sending it out to a money focused organisation whose bottom line is to make money for their shareholders, which is very legitimate, but one would think that their primary purpose would not be to spend a lot of time and money in implementing the plans that they agree to. That might be unfair to the airlines—

Mr Retter—I will answer your question in this way and then I will make a couple of specific comments. As you rightly pointed out earlier, it is not for me to comment on government policy. However, in establishing the policy and the framework that exists now, in terms of who is responsible for the operational aspects of security, the government looked at the various models that were available. There are many models around the world. There is no evidence that I am aware of that would suggest that one model is better than the other. I have certainly spent some time looking at alternative models around the world. The issue here in terms of our role in ensuring that we uncover noncompliance, a weakness or a vulnerability in the system that is not being addressed effectively, is to do, as Mr Crombie alluded to, a combination of education and, where necessary, enforcement action to ensure that industry participants comply with the requirements of their transport security program and, indeed, the act and the regulations.

CHAIR—I am sure that is done with the very best intentions and that the plans are squeaky-clean and spot-on. I appreciate that you have answered the question by saying that it is a matter of government policy, which I guess looks at issues of resources as well. Could you comment on this scenario: airports are inundated with state policemen—behind the scenes and in front of the scenes—obviously paid for by the Commonwealth. What would you think about that scenario? Why is that impractical, stupid or impossible?

Mr Retter—Following on from the Wheeler review, the unified policing model is, as you are aware, being implemented across the 11 designated airports. Any future decision to extend that regime would be based on recommendations from this department and the Australian Federal Police.

CHAIR—We are aware that there is a unified policing model coming in, but can you briefly tell the committee what exactly that is and when it is likely to start?

Mr Retter—This is a matter that would probably be better handled by the AFP. The unified policing model involves many police capabilities in conjunction with other agencies. Mr Crombie can correct me if I leave something out, but there are a range of capabilities extending from the most overt and obvious—the counterterrorism response capability—through to intelligence capabilities, investigative capabilities and community policing capabilities. All of these capabilities work under one airport police commander, who also works very closely with other government agencies and industry in the airport security committees that exist.

CHAIR—Does that mean there will be more state and federal police at the front, back and side of airports?

Mr Retter—The number of police at those designated airports is increasing as the unified policing model takes hold at those airports. It is taking some time for that process of capability growth in policing numbers to take place at those 11 airports. As you would be aware, those police are being drawn from the various jurisdictions. To some extent, that growth has varied from jurisdiction to jurisdiction, as I understand it, but you would have to go to the AFP to get the precise numbers.

Mr HAYES—We see uniformed officers walking around as we check our bags in, but I think the chair is asking about what is happening airside at our terminals in terms of law enforcement, intelligence gathering and what have you.

Mr Retter—It is my understanding that the types of activities you are referring to, some of which will be overt and some of which will be covert, are occurring—and it is not just the Australian Federal Police or the airport unified policing model assets that are doing that work. Customs has been given a role in conducting airside inspections. The message is that the security systems in place at an airport do not rely on one particular system or approach. There is a layered approach to the security we see operating at an airport. To conduct unlawful interference with an aircraft or aviation requires you to get through a number of layers of security. I would challenge anyone to give a 100 per cent guarantee that our airports are impervious. However, I would say that the vulnerabilities identified are being addressed progressively and the improvements that have been made since September 11, 2001 are significant. We continue to address those vulnerabilities, as we find them, in the aviation sector.

Senator PARRY—I want to drill down a bit into the screening. Mr Crombie, you mentioned the screening authority. Is that controlled by DOTARS?

Mr Crombie—The screening authority was established by a legal instrument signed by DOTARS.

Senator PARRY—Who administers the screening authority? DOTARS?

Mr Crombie—Do you mind if we talk about a worked example?

Senator PARRY—No.

Mr Crombie—Sydney Airport Corporation is the legally established screening authority at Sydney airport terminal No. 1.

Senator PARRY—You explained that before. Who controls the screening authorities? Who sets them up, who approves them, who authorises them? Is it DOTARS?

Mr Crombie—The secretary of DOTARS.

Senator PARRY—And you do the random inspections you mentioned earlier to check their capability?

Mr Crombie—Yes.

Senator PARRY—Are all personnel who enter an airport to work inside the secure area screened as they enter?

Mr Crombie—If I can differentiate, in the sterile area—which is the bit that effectively the passenger is going into before boarding—anybody who does not have the authorisation to enter unscreened is screened. There are a number of authorisations—

Senator PARRY—Who has the authorisation to enter unscreened?

Mr Crombie—Typically that would be the likes of airline and airport employees who are coming and going on a very regular basis as part of their operational duties. The airports also manage that through their access control regimes.

Senator PARRY—Who controls it? Who sets up the authority for people to be exempt from screening?

Mr Crombie—That is done through our regulatory framework.

Senator PARRY—Does DOTARS control that?

Mr Crombie—Yes.

Senator PARRY—Why do you give exemptions for people to not be screened?

Mr Crombie—There are people who come and go all day, as you could imagine, in and out of those places.

Senator PARRY—What about me coming in and out of Parliament House? I am a senator and I get screened. What is the difference?

Mr Retter—I think the difference is the frequency at which you might move in and out of this building versus the frequency at which some members of the airline industry are required from landside to a secure area. That is the issue. Again, it comes back to risk. It is looking at the issue of the person who has been background checked and then a decision being made by the company

that is responsible for that area. Mr Crombie gave an example where in terminal 1 certain employees, but not necessarily all of them, are granted access to those areas because they travel to and from them in the nature of their duties.

Senator PARRY—Do you see that as a vulnerability within the secure areas of airports?

Mr Retter—There is a risk involved and the issue of the vulnerability, or the extent of that risk, depends upon an assessment of whether the person has been background checked, what sort of individual they are, what sort of duties they perform and what access has been given to that person—are they going into vulnerable areas or not. In other words, some people have access to the whole of the airport. The chief operations officer of SACL would have unfettered access to most of the airport. Other people may have specific access to a specific part of the airport because their duties require them to go to and from.

Senator PARRY—What about people who are working on site—for example, building contractors? We have heard about the cement truck driver et cetera. What about people who are driving a goods vehicle in and out—are they checked and screened each time they enter the airport precinct?

Mr Retter—The answer is that anyone who is required to go to a security controlled area within an airport, particularly at our designated airports, is checked as they go into those secure areas. Let us take some examples from the past that have been notable. In some cases we alter the dimensions of the secure area. In the case of Sydney airport, where we might be doing construction work, we may erect barricades and barriers that prevent those construction workers from getting to other secure parts of the airport. We effectively designate the construction area as an exclusion zone that they can work in, but we put in place sufficient barriers so that access for those workers is contained within the area that they are working in and does not affect the day-to-day operations of the airport. So there are practical measures that you can put in place. We are progressively increasing the air side inspection regimes. Indeed, the designated airports—and correct me if I am wrong—since about July 2005 have been putting in place, on a voluntary basis, extensive air side inspection regimes which involve the inspection of staff going into these secure areas.

Senator PARRY—Do you or some authority have a record of every person who has entered the secure portion of an airport on a daily basis? Would there be a names register?

Mr Crombie—That would depend on how the airport is managing its access control system.

Senator PARRY—It would vary from airport to airport. Is the police commander in charge of all security issues at the airport in every aspect? What is the designated authority? Who would run any security operation or have ultimate control over security matters?

Mr Retter—I would describe it in terms of the preparation and prevention aspects of security. There is a cooperative approach which involves a number of agencies and it is embodied in the airport security committee, which the CEO of the airport chairs. But when it comes to law enforcement activities or policing matters, they are obviously the realm of the airport police commander, who has authority to undertake whatever his duties might require as an incident unfolds or as an investigation unfolds.

When it comes to the response aspect of an incident involving law enforcement, there is no doubt that the police commander is in charge or, if there is something that the police commander sees that he is concerned about, he has the ability to make executive decisions to deal with those matters. Equally, if he believes he has uncovered a vulnerability and something needs to be addressed in a progressive way, then he might take that matter to the airport security committee. That is a judgement call about: is this something that can wait for tomorrow or something that needs to be addressed right now?

Mr HAYES—I was interested in what you had to say about there being instances where you would have targeted operations if you saw issues of systemic breaches. Have there been instances of targeted operations to date?

Mr Crombie—Back in 2005 before Wheeler arrived, there were concerns about access, so a large number of our inspectors were deployed to the airport specifically to target checks around ASICs display and check that people had ASICs where they were supposed to have them. We saw there was a potential issue, so we deployed people to go and do that work.

Mr Retter—I think we have a very robust incident-reporting or event-reporting regime in place that obligates industry participants to report all security related incidents to us. When an incident is reported, each one is investigated by us on a 24-hour daily rotating basis, so every 24 hours we sit down and look at these incidents. If I find that there is a vulnerability or an emerging trend that requires a targeted—you used the word 'operation'—amount of effort being put in by our transport security inspectors to go and address that, then we will do so. In a sense, it is intelligence led on the basis of what is coming from other agencies and what we are uncovering from industry in terms of vulnerabilities in the system.

Mr HAYES—Considering this inquiry is about serious and organised crime and understanding where it has overlaps with terrorism, now that we have a situation at all of our airports, as you correctly identified, where state policemen wear Commonwealth uniforms but they are still state police—I think they wear state uniforms too, don't they, and their commander—

Mr Retter—My understanding is that they are actually sworn as AFP police when they take up their duties, or they are seconded across to the AFP for that period. Again, I think that would be a matter for the AFP to answer.

Mr HAYES—Each of those sworn police officers is subject to their own integrity regime, Commonwealth or state. They can actually be tested on their integrity. Therefore you can have controlled operations—not to find a crook but to test whether people are doing their jobs. If they fail the test, they are in serious breach of their integrity. If we are doing that for all those police officers who are operating at our airports, are we doing anything similar for those other people who have the carriage of security, whether it be SACL at terminal 1 at Sydney or Qantas at terminal 3 et cetera? Do we test to that extent?

Mr Retter—I think there are two ways to answer this. The first point I would make is, funnily enough, something that I would call brand protection: it is in the industry's interest to make sure that they are doing what they need to do to protect their brand, their asset. Industry is focused on security from a shareholder perspective. That is my view. A damaged brand can have a

significant effect on shareholders. If there were a major security incident which involved an aircraft being attacked—let us say a 767 taking off from Sydney airport were to crash—the net impact that we have assessed of such an incident is around $30 billion over two years because of the consequential impacts on the tourism industry and other places. This resonates, I can assure you, with our senior aviation members of boards. They are absolutely focused on doing the right thing. They have their own internal audit and compliance regimes to ensure that what has been signed up to by them in their transport security programs is being adhered to.

Mr HAYES—I did notice that Sir John Wheeler was not commissioned to look at the possible stock market movements in terms of a calamity on airlines.

Mr Retter—I do not think it is a question of stock market movements; I think it is a question of survivability of major entities in Australia. Security is just one of those matters that a company dealing with critical infrastructure, which it knows is potentially at risk, has to deal with. I believe that industry has its own vested interest in doing that. Having said that, the second part of the answer to your question is that, if there were significant failures or noncompliance identified by us in terms of any industry participants not adhering to what they have signed up to in the transport security program, then I have the ability to enforce those requirements if required.

Mr HAYES—What I am trying to test here is your testing regime of compliance. I do note that you are talking about officers going out at certificate IV level, which I think is about trade certificate level. So they are not necessarily police and they are not necessarily investigators. I understand all that. But, if we have the Commonwealth actually applying very strict monitoring standards to the police who are working at the airport, why aren't we applying a similarly strict compliance regime administered by your department to those who have contractual responsibilities for security?

Mr Retter—I think in a sense I have answered that question. I would argue that the amount of audit compliance that we undertake does provide me with an assurance that various airport owners, operators and airlines are complying with the act and regulations and that we do have the ability to enforce the requirements upon them. I believe I have a pretty good handle on what airlines and airport operators are doing in terms of security outcomes. I would also say that there are other measures that are in place, I suppose as layers to my assurance regime. We spoke about screening authorities, and there are screening companies that then deliver the actual activities, functions on the ground. They are all subject to state licensing requirements for the security guards that operate there. There are also, as I understand it, another set of state based regulations pertaining to what standards are required.

Mr HAYES—Those organisations have a motive to protect their own brand names I would suggest as well—not that I would think that there would be anything untoward in terms of the way Qantas might handle themselves and their security at terminal 3 in Sydney. How are you satisfied that, if there were a breach of security, it would not be a case of: 'We would not want this damage to the brand name so we have remedied it ourselves, we have taken steps and ameliorated the issue and we have progressed on'? How have you tested to make sure that those things do not get through to the keeper?

Mr Retter—I come back to the fact that we have a regime that, unannounced, looks for weaknesses and nonadherence to the act and regulations reflected in the transport security programs. If breaches are identified, we always have the option of referring those matters to law enforcement agencies for further investigation and prosecution. That has occurred and will continue to occur where appropriate.

Mr HAYES—What you are saying is that you do not have targeted operations to that extent. You simply satisfy yourselves that the act and regulations are being adhered to unless you see something that is in breach of that, and then you would act.

Mr Retter—If I see that there is a trend emerging where we are identifying weaknesses or noncompliance at a particular airport or with a particular airline, then I do have the capacity to undertake a targeted operation, as you called it, to address that vulnerability.

Mr HAYES—It was Mr Crombie's term.

Mr Retter—My apologies. In that sense we do have the ability to undertake a targeted audit and compliance regime. I look for systemic weaknesses and trends, through the incident data reporting information that we have and that we share with the AFP, to ensure that where weaknesses are identified that appear to be systemic we can address them.

Mr HAYES—I do not wish to sound argumentative, but what I am trying to get to is: how far do we as a Commonwealth press the test that these things are operating as they ought to be?

Mr Retter—We press them to the point that, if required, we will take people to court.

Mr HAYES—I know that we have not done that as yet.

Mr Retter—We have not, but the AFP has on a number of occasions.

Mr HAYES—Were they criminal acts?

Mr Retter—Yes.

Mr HAYES—A lot has been made of the issue of a cement truck getting through. I know that, for instance, in Sydney when they upgraded their aprons and things of that nature, the way of getting heavy vehicles airside was to persuade a driver to surrender his driver's licence. Is that still the way that you would get a heavy vehicle airside?

Mr Retter—I cannot comment on the specific example that you have given. I suggest that we take on notice the matter of what the airside inspection regimes involve in terms of access. As was explained before, there will be slight variations in the access procedures followed at each airport, depending upon the reason that a particular individual is going airside. I can say that for those people who are going airside on a regular basis for legitimate purposes there are inspections that occur as they go onto the airport. We are progressively tightening the airside inspection regime and it will improve over time. Regarding your specific question, I am not sure that I could comment without further investigation as to what is going on.

Mr HAYES—I still think there are probably very good logistical reasons. If you are doing an upgrade to the airport and have a contract with Boral, they will have a whole series of owner-drivers who will have to come through. Not everyone is going to have an ASIC if they have only just landed the contract, for instance.

Mr Retter—In that case, we would normally see that the airport put in place arrangements to ensure that the access afforded to those contractors did not prejudice the overall security of the airport. This might involve restricting their access to a particular gate; putting in place additional security fencing that effectively isolated whatever work was being done to a particular part of the airport; or restricting their access either to a particular time of the day or to a particular area, thus not compromising the overall security of the airside. That is my normal understanding of what occurs. I would be happy to provide you with further advice in relation to that matter where it pertains to cement truck drivers or any other construction worker coming on site.

Mr HAYES—It is how we maintain the integrity of our security there. We are always going to be doing work in and about airports. We understand that. But what mechanisms are in place to maintain the integrity of our security?

Mr Retter—We will provide you with some written advice if that is suitable.

CHAIR—We have heard a lot of evidence about the information going into the CrimTrac databases about aviation and maritime licences. That does not happen apparently. You are familiar with CrimTrac and the work they do in coordinating information from various law enforcement agencies across Australia. Can you comment on the reasons why aviation and maritime licences should not be included in the CrimTrac databases?

Mr Retter—It is not an area that we deal with specifically. That would be a matter, I would suggest, in the case of aviation licences, for CASA to have a view on. I am not aware that that issue has cropped up—

CHAIR—I do not mean aviation licences only; I mean the security licences that aviation people hanging around airports get—the passes and that sort of thing.

Mr Retter—You are talking about the aviation security identity cards?

CHAIR—Yes.

Mr Retter—First of all, we are moving to a new regime on 3 September. The Attorney-General's Department have created a new division called AusCheck, which will take on the coordination of background checking. We can provide you with further information as to that. Effectively, at the moment when somebody applies for an aviation security identity card or a maritime security identity card, the issuing of that card depends upon results of a number of background checks, one of which involves a criminal check, which is where CrimTrac comes in. The coordination of that application process is a combination of a background-checking unit, which is an Office of Transport Security unit, which coordinates—

CHAIR—Does the background-checking unit have access to the CrimTrac databases?

Mr Hanna—Sorry?

CHAIR—Does this unit that Mr Retter is talking about have access to the CrimTrac databases?

Mr Hanna—No, it does not. The background-checking unit in Melbourne, the DOTARS background-checking unit, is responsible for checking the criminal histories of individuals. There is also another component where ASIO undertakes certain checks. In that checking of criminal histories, that record goes through the AFP, who access the CrimTrac database—but only the names index at this stage.

CHAIR—So you get the AFP to do the criminal checks?

Mr Hanna—That is correct.

CHAIR—Could you take it on notice and let us know if there is a privacy policy or other issues which would prevent those who are issued with cards going onto the CrimTrac databases? Perhaps you know the answer now, but, if you do not, could you take that on notice and let us have half a page—

Mr Retter—The intent of that would be that we would have a list in one place of all people who have applied and received a card; is that your question?

CHAIR—Yes. So that CrimTrac could join them up with some guy who is wanted on a warrant in Melbourne for a double murder or something. We would like to ensure that in years to come—when I say, 'We would like to ensure,' that is a bit presumptuous but—

Mr Retter—We can have a look at that matter and provide advice to you; however, you might care to talk with the AusCheck division within the Attorney-General's Department, who from 3 September this year will have responsibility for coordinating and pursuing the background checking of all maritime and aviation security identity card applicants.

CHAIR—Someone mentioned AusCheck to us yesterday. I expressed no knowledge of it. Someone indicated that they did have some knowledge. Are you aware of that?

Senator PARRY—I think AusCheck will liaise with CrimTrac anyway. I think it will be circumvented that way.

CHAIR—Okay. Senator Parry has a question, but we are a little over time, so please make it quick.

Senator PARRY—In the interests of saving time, I might make contact with you directly, Mr Retter. But just to make sure I am on the right track: does DOTARS have responsibility for the explosive substance trace testing at airports—the supplementary screening after you have gone through the X-ray machines?

Mr Retter—Are you talking about policy responsibility or the actual conduct of those checks?

Senator PARRY—Policy in particular—the overall control, similar to the screening question we went through earlier with Mr Crombie.

Mr Crombie—The explosives trace detection is mandated as part of an instrument that we issue under the act about how the screening authorities are to undertake screening.

Senator PARRY—That answers the question then. I will make contact directly with you. I have some concerns about that—you mentioned systemic weaknesses. There are a couple of systemic weaknesses in that process, so I will talk to you privately about that. Thank you.

CHAIR—Thank you. I think there are a couple of matters you will get back to us on. We would appreciate that as well.

[9.57 am]

HARRISON, Mr Tony, Assistant Commissioner, Crime Service, South Australia Police

CHAIR—Thank you for coming today. We appreciate your assistance to this committee. I suspect you have appeared before parliamentary committees before but, just briefly, they are part of the parliamentary process, so parliamentary privilege applies. If there is anything that you would like to say that is of a sensitive nature or you think should not be talked about publicly we can go in camera. Thank you for your submission. If you would like to make a short opening statement, we would be pleased to hear that and then we will ask some questions.

Assistant Commissioner Harrison—Thank you for the invitation to be here this morning as a follow-up to the submission. I have read some of the other submissions. I am sure you are detecting somewhat of a common theme through those submissions. I have a couple of comments to reiterate on some of the themes and the trends that we are identifying from a South Australian jurisdiction perspective with serious organised crime. Certainly, there is the diversification within industries and across industries. I have been in the area of serious organised crime investigations both as an investigator, a middle-line manager, if you like, and a senior executive over the last 10 or 15 years.

I have seen some considerable changes in the demographics, the structure and the operating practices. On diversification: some years ago you would have seen criminal networks and groups predominantly remaining within a particular industry, whether it was car rebirthing, drug distribution or firearms. We are seeing today that people are becoming far more opportunistic and looking at dabbling in any and all industries for the purpose of making money. There does not seem to be a great deal of loyalty within particular areas or jurisdictions. It really is a matter of taking whatever opportunity presents itself at any given time. There do not seem to be the loyalties within any particular industry area or in relation to a commodity, for example.

Certainly, there is diversification within legitimate as well as illegitimate businesses, and I would suggest that is certainly going to be a challenge for law enforcement in the future. Once organised crime figures and enterprises become entrenched within legitimate businesses, it certainly makes it far harder for law enforcement to investigate, detect, gather evidence and subsequently prosecute. It seems to be the case that, whether it is the transport industry, the security industry or, more recently, finance, money lending, telecommunications and so forth, there is certainly a move into those industries and there is no doubt it is for the purpose of, in the broadest of terms, enabling money laundering and disguising the black money, the proceeds of the criminal activities. That has become evident certainly across, I would suggest, all jurisdictions and territories and states within Australia and it is certainly what I have evidenced in overseas areas like the UK, Canada and New Zealand as well.

From a South Australian perspective, I would really like to highlight—and I know this is certainly evident in other parts of Australia—the very close direct linkages with outlaw motorcycle gangs. There has literally been a proliferation of membership and an increase in the existence of both gangs themselves and the membership of those gangs and associated chapters. Certainly, from a South Australian perspective, I can speak with some authority that all serious

organised crime—with investigations launched either by us at a state based level or together in a joint agency approach with the Australian Crime Commission, AFP and others, bar none—all have a linkage with outlaw motorcycle gangs. I think the outlaw motorcycle gangs see it as improving their status within the serious organised crime world, if you like. From the perspective of the more traditional serious organised crime figures, I think they like the associations because they can call upon the outlaw motorcycle gangs for, I guess, debt collection, extortion, blackmail, intimidation and violence. There is no doubt that it is a two-way process and that the outlaw motorcycle gangs are infiltrating more widely into serious organised crime, but also the more traditional serious organised crime figures want to be seen and want to have linkages with outlaw motorcycle gangs.

You may be aware that in recent weeks the government of South Australia—and, as recently as yesterday, the Premier made a significant announcement of significant law reform in the area of outlaw motorcycle gangs—will certainly assist law enforcement with the policing of organised crime more generally and will certainly have an outlaw motorcycle gang focus. I am part of a working party at both the state and the national level to try to advance collaboration across all agencies and jurisdictions around the country. I know that, even as recently as last week, police ministers and commissioners met in Wellington. Certainly New Zealand wants to be a part of any development in having more of a national collaborative approach o serious organised crime and outlaw motorcycle gangs.

I will very quickly say that there is certainly evidence of increasing involvement by technical experts, if you like—people who have financial accounting skills, lawyers, solicitors and others who we are finding in real estate and other industries who have direct linkages with serious organised crime and particularly outlaw motorcycle gangs. Certainly, in more recent years there seems to have been an increase in ethic based groups involved in serious organised crime. A number of those have been highlighted through both media and law enforcement activities in recent years. It will be another significant challenge for law enforcement to be able to infiltrate ethnic based organised crime groups. I think we have been traditionally relatively successful in infiltrating the more traditional Australian based groups, but it is more challenging when you come up with language barriers, cultural barriers and other barriers to start to infiltrate ethnic based organised crime groups. Those are certainly just a few comments in addition to the submission. I am certainly more than happy to take questions in addition to that.

CHAIR—Thank you very much. The timing of your attendance here is very appropriate. This is obviously a busy time for you.

Senator MARK BISHOP—There are a few issues I want to pursue with you. For many years now, particularly in the last four or five years as I understand it, South Australia has had very tolerant—indeed, some say encouraging—marijuana production laws where, as I understand it, up to certain levels of growth are permitted legally in home based enterprises. Presumably, the product that is grown is either home used or on-sold. Is there any connection between the apparent growth in South Australian marijuana production, which I have seen some figures of, and the seed capital that these outlaw motorcycle gangs use at the beginning to set themselves up and then to maintain cash flow—that is, is there a significant penetration from the outlaw motorcycle gangs into the home production of marijuana in South Australia and then hence into presumably sale markets?

Assistant Commissioner Harrison—That is a big question. Firstly, in South Australia it always has been and still is illegal to grow any quantity of cannabis. We certainly have an expiation notice regime for being in possession of small quantities of cannabis and/or growing plants and in recent years that has also changed. Until recently it was by way of expiation a way of managing identification of cannabis by issuing an on-the-spot fine if you like for up to 10 cannabis plants. With the to some extent proliferation of the hydroponic industry in South Australia, to which you may be alluding—

Senator MARK BISHOP—I am.

Assistant Commissioner Harrison—The Controlled Substances Act has been amended in recent years whereby it is now—it always has been—illegal, but we are not able to any more expedite those matters for hydroponic growing of cannabis. This means that owing to detection a person must front the courts in South Australia for any form of hydroponic cannabis cultivation today. The only exception now is that we still expedite the growing of up to one cannabis plant.

Senator MARK BISHOP—When you say 'expedite' what, do you mean?

Assistant Commissioner Harrison—Expedite is similar to a traffic infringement notice which a police officer would issue and then there is a monetary fine of approximately $150 for having possession of small quantities of cannabis and/or growing plants. In relation to hydroponics that is no longer available. The police must refer the matter to the courts for the imposition of a penalty. We still issue expiation notices for the growing of one cannabis plant if the plant is growing in the ground. That has been a significant change in the last couple of years. We have actually seen in the last 12 months a reasonable decline in the number of detections for cannabis growing in South Australia and it may be partly attributable to the fact that the law has changed in relation to the way in which we impose a penalty for the growing of hydroponic cannabis.

Senator MARK BISHOP—Is it public policy in South Australia to rigorously enforce the breaches of the hydroponic industry, or is it public policy to be reactive or perhaps turn a blind eye? I do not mean that disrespectfully. I mean in the context, say, of sometimes in the domestic prostitution industry it is just a live and let live policy on the part of the state. Is it that sort of analogy in South Australia with the hydroponic industry?

Assistant Commissioner Harrison—I do not believe so. I think from a law enforcement perspective there is no discretion in relation to imposing an expiation notice and/or submitting a police apprehension report and putting a person before the court no matter what quantity of illicit drugs they may be in possession of or how many plants they may be growing. We certainly have a diversion program in relation to illicit powder drugs for adults now and that is common across a number of Australian jurisdictions to divert people into rehabilitation and so forth. I can say—going back to some of your initial comments—that there is no doubt about it: within South Australia we have a significant number of people taking advantage of growing cannabis hydroponically. There is no doubt about it and we can evidence that—there is significant—

Senator MARK BISHOP—It is now on the public record; people understand that.

Assistant Commissioner Harrison—For a number of years there has been a significant trade between South Australia and particularly the eastern states—I would suggest more New South Wales and Queensland, where cannabis in significant quantities has been transported through to New South Wales and Queensland. I know we have apprehended 50 and 60 pound quantities in the last couple of months in small vehicles trailers and so forth regularly transported. We intercepted last Friday week 27 pounds of cannabis on its way to New South Wales. So there is a large industry in relation to cannabis moving from South Australia to the eastern states. The suggestion has been and we have seen heroin in particular but probably methamphetamine as well coming back from the eastern states into South Australia. That has been occurring for a number of years; you are right in suggesting that is the case.

Senator MARK BISHOP—Do you have any evidence that that growth in the hydroponic industry and in the trade backwards and forwards between South Australia and the east coast is linked to either outlaw motorcycle gangs or organised crime groups?

Assistant Commissioner Harrison—There is the small-time criminal entity that is running its own cultivation process—and you may be aware that if you grow cannabis hydroponically you can literally turn over a crop within about 10 or 12 weeks, so over 52 weeks you can probably fit in four or five rotations of 10 or 12 plants. If you do your sums, with approximately a pound of wholesale cannabis being yielded and fetching $2,000 to $3,000 a pound in the eastern states, there is a lot of money to be made. But we certainly have evidence and we have seen that there is a significant organised approach to the growing of cannabis. That has been evidenced by the situation of what we refer to as 'grow houses'. We have seen some six, eight, 10 or 12 houses which are deliberately sought through the acquisition of rental properties, and if you enter these premises you will see each of the rooms within the house identical in the way that it has been set up, from the agricultural pipe to the electricity, the lighting systems, the fertilisers, the carbon filters used and the extraction systems. They are literally identical, and people have obviously used the same electricians and others to establish them. We have come across eight, 10, 12 or 14 of these houses. Some of these houses would be producing 20, 30, 40 pounds of cannabis per house. As I said, that can turn over at the rate of eight to 10 to 12 weeks maximum once they have efficiencies in relation to the growing procedures for cannabis. So, yes, it is directly linked to outlaw motorcycle gangs in some cases and certainly to other, ethnically based, organised crime groups who have taken advantage of the cannabis production market within Australia.

Senator MARK BISHOP—We had some evidence in Western Australia that the ready availability of SIM cards for mobile phones was presenting a problem for law enforcement agencies. When you have a landline, it has to be registered and the appropriate agencies can check and trace calls and that sort of thing. Firstly, is the ready availability of SIM cards through supermarkets and petrol stations and so on an issue, from your observation, in terms of being able to investigate purported illegal activities and trace and check and prosecute? Secondly, in that context, when you seek to get wire taps or background information on users of either mobile or land based phone systems from carriers and telcos, is the cooperation provided by the telcos or carriers adequate for your policing purposes?

Assistant Commissioner Harrison—In answer to your first question: the proliferation of resellers in the telecommunication market and the availability of prepaid SIM cards has certainly become an inhibitor for us to successfully identify the users of mobile telephones. It certainly

impacts on our ability to conduct investigations, because of the inability to know who has what phone, what telephone number and so forth.

Senator MARK BISHOP—Is it a serious inhibitor or just a minor irritant?

Assistant Commissioner Harrison—I would say it is very serious. When I was an investigator in the early nineties, we virtually had three telecommunications carriers: Optus, Vodafone and Telstra. They predominantly had the market. They were very obliging in assisting law enforcement in relation to subscriber check details and call charge records. We now have a proliferation of resellers in the market. In South Australia we have identified a move by serious organised crime figures to obtain, either directly or through an immediate family associate, a telecommunications licence. You can be prohibited from being a company director under Commonwealth law if you have a dishonesty offence recorded against you, but we cannot necessarily prevent someone from being a company director if they have a serious drug conviction against them. In many instances where serious organised crime identities may have serious drug and/or violence convictions, that does not necessarily preclude them—and it certainly does not preclude an immediate family member—from being a company director. It is certainly one of the areas in which—and you would have seen it in the paper—we strongly believe there needs to be some tightening up in relation to a fit and proper person being a director of companies, particularly in the area you are referring to, telecommunications.

Senator MARK BISHOP—Is that Commonwealth law or state law?

Assistant Commissioner Harrison—I understand that it is Commonwealth law. There is a proliferation of resellers in the telecommunications market—prepaid. I am sure you have heard that serious organised crime identities, sometimes drop two, three or four SIM cards a day because they believe the police may be intercepting their communications. You can regularly identify serious organised crime figures who carry four or five SIM cards—and phone numbers, obviously—at any one time. Their phones will belong to particular networks or be for particular purposes, and it is obviously a tactic being utilised to try to minimise the chances of police successfully intercepting those communications.

Senator MARK BISHOP—Thank you. You did not respond to my final point. With regard to police access for information to reseller carriers, do you have any comments to make as to assistance provided by the resellers?

Assistant Commissioner Harrison—I will preface my answer by saying that it is not my area of expertise, even though I have responsibility for the telephone interception section within the South Australia Police. But generally speaking I think cooperation has been good over the years. We have what is called the LEAC, the law enforcement communications system, meeting around Australia. They meet three or four time a year, both at the technical and at the practitioner level. They look at these sorts of issues on a regular basis. I am aware that within South Australia—and I think it is common in other jurisdictions—we have implemented what is referred to as a SEDNode system. I do not know what it stands for but SEDNode provides the ability for us to electronically access details from the carriers. This is done through an electronic means of making an application request and having the information come back to us, rather than the more traditional system of emailing or faxing and waiting for hard copies to come through the system.

Senator MARK BISHOP—Is that a South Australian development or a national development that has been implemented in South Australia?

Assistant Commissioner Harrison—I would suggest that it is national, but I am not sure of the details and the origin of the establishment of that sort of system.

Senator MARK BISHOP—Are your officers using it now?

Assistant Commissioner Harrison—They are using it, but currently not all carriers or holders of information are utilising the system. I do not know whether that is because they have the ability to refuse to participate in it, or because we are still going through striking up arrangements and agreements with different carriers and communication companies.

Senator MARK BISHOP—Could I ask you to go back and check with the people who report to you on this issue so that you can provide the committee with exact advice in writing as to whether your officers are experiencing any difficulties with accessing the information—either in hard form or electronic form—from telcos, carriers or service providers that you need to pursue your purpose. Secondly, could you identify whether it is industry issues, systemic issues or particular companies that are a problem. Thirdly, what is your preferred method for solving the problem—whether it is for us to make recommendations or whether you are capable of resolving it at a local level? Are you able to do that?

Assistant Commissioner Harrison—Yes.

Mr HAYES—One of the things that is coming through at this inquiry is the issue, from the operational police perspective, of databases and whether they should be extended—particularly CrimTrac. What is your view about that?

Assistant Commissioner Harrison—We can always enhance communications, databanks and intelligence systems between law enforcement agencies. To a degree silos exist within individual law enforcement agencies, never mind across law enforcement agencies. We need to have national systems when we are a large country but with only 21 million people and about 55,000 law enforcement officers. It would be great to further advance CrimTrac, the MNPP—the Minimum Nationwide Person Profile system—the ACID system and others that have been referred to in the documentations and submissions. There is always a bit of territorialism between agencies where they want to hang on to certain information, but I have also detected in the last two or three years far more cooperation, which is probably induced by the approach to terrorism. Agencies are working better together and more closely to exchange information.

Mr HAYES—I know A-G's have indicated that they think there may be some cultural impediments in freely giving this information up, but that is not coming through from the senior police officers who have fronted this inquiry.

Assistant Commissioner Harrison—Maybe historically that has been the case but in more recent years there has been very good cooperation between law enforcement both at a national, state and territory jurisdictional level. I feel the process of improving these systems is a little sluggish and it could be hastened. I know that we are still going through the systems. I am on a board in South Australia to look at what sort of information will be uploaded onto CrimTrac

through the MNPP process. It has taken a number of years and it probably is still going to take some more years before it is bedded down and the system is working effectively. But I think we are heading in the right direction. I am sure that we would all like to speed up the process at the same time.

Mr HAYES—You are not employed by the Commonwealth and yet you are a senior police officer. To give you the same opportunity that we gave Commissioner Moroney and others, from an operational policing perspective what do you think we as a Commonwealth can do better to assist the fight against crime while observing the state jurisdictions and all the rest of it? I think there is a role for the Commonwealth perhaps at the level of coordination and technical resourcing et cetera. As a senior police officer in South Australia, what do you think that we as a Commonwealth could do to make policing better?

Assistant Commissioner Harrison—There are a number of issues, and you have touched on those briefly. In terms of resourcing, the technical capacity of law enforcement operations—telephone interceptions, listening devices and surveillance operations—are very expensive to run both from a personnel perspective, the equipment and the operating costs. There is no doubt that having more of a national approach to investigation tools would be very beneficial, as would harmony between state, territory and Commonwealth legislation. To highlight what you are probably aware of, we still send detectives interstate to bring back a person for committing a fraud, hold-up or rape. Two detectives on a plane travel interstate, appear before a magistrate, make an application and then bring them back across the border. With 21 million people in the country, law enforcement would love to get harmony in legislation and extradition and we need to look at the border issues as well. I know from Premier Rann in South Australia that that is the call in relation to outlaw motorcycle gangs—to look at harmony in legislation. There are a number of aspects that I would like to briefly mention which have evolved from South Australia in the last couple of weeks and are now on the public record of legislative reform. Getting harmony and encouraging the states, territories and the Commonwealth to look at getting legislation that is complementary to each and every state and jurisdiction would really go a long way to ensure that we do not have serious organised crime figures exploiting not so much loopholes but a lack of harmony between jurisdictions and states.

Mr HAYES—That was the basis for establishing the DNA database and collection procedures and for having model legislation, but that did not precisely occur. While everyone agreed to do it, there were various idiosyncrasies built into it. Peter Falconio's case is, I suppose, the prime example of where these differences were developed and obviously South Australia featured in those differences.

CHAIR—I think we are going to appoint you as chief of police and the Attorney-General's ministerial council! And if you can do everything that you have just spoken about, I think the country would be far better off.

Mr HAYES—You would also be glad to know that about 15 years ago the police ministers' conference agreed to progress a common criminal code, but that is like pulling teeth at the moment as well. Realistically, when you have an operation which comes under the classification of serious and organised crime initiated out of South Australia, obviously it is a resource by the South Australian police, whereas if we had a matter which was initiated by reference through the ACC in a targeted operation it still might involve South Australian police but it would be

resourced federally. If the issue is attacking and combating serious and organised crime, is there scope for looking differently at how we provide the resources?

Assistant Commissioner Harrison—I need to be careful about what I say because the ACC is not my area of responsibility, but I can talk from a South Australian perspective. The ACC office in Adelaide has a reasonable number of personnel that largely have an analytical intelligence type function. The investigation aspect of the ACC office is largely and predominantly made up by South Australian police investigators, so we second our officers or give them leave without pay to go and work in the ACC Adelaide office. I would suggest that the ACC or the Commonwealth could look at the balance of investigational analytical focus versus investigation focus with the resourcing model. There is no doubt that we are putting good quality skilled investigators into the ACC office, which we strongly support, but it is taking resources away from our level 1, level 2, quite serious type crime investigations. I wonder whether the balance of the intelligence analytical function of the ACC from a Commonwealth funding perspective within the South Australian area is right in relation to the number of full-time resources they have allocated to investigations to support the intelligence function.

Mr HAYES—One final thing: for the development of the RICO laws—I suppose we refer to those as RICO laws—to be effective, should they be enacted across the Commonwealth? South Australia may take somewhat of a lead in this, but I know New South Wales is looking at similar provisions. State by state, I would have thought those sorts of association laws would be inherently difficult.

Assistant Commissioner Harrison—Very briefly—I know time is pressing for you—we have in the last month put together a significant options paper to the South Australian government which is now on the public record in relation to outlaw motorcycle gangs and serious organised crime generally. Inspector Damian Powell, one of my officers, did comprehensive research around the world, from the Netherlands, Germany, Canada, New Zealand, the US and other countries, looking at serious and organised crime type legislation. Our conclusion and the advice we have provided to government is that RICO legislation, the New Zealand legislation and other similar legislation can be very complex, very protracted and very resource intensive through the court process in getting a conviction. A lot of cases, as you would be aware, predominantly revolve around two, three or more persons acting in concert for a common purpose to commit serious organised crime for a money-making enterprise. The experience from overseas and our view would be that we could end up three or four years in court before we secured a conviction. So would we really be achieving what we want, which is to disrupt these organised crime groups?

The approach we are looking at taking immediately—and I think it is going to be expedited through the South Australian parliamentary process in the next three or four months—is to in the first instance look at breaking up the associations of these groups, to look at similar aspects of control orders or restraint orders and anti-criminal association laws which will preclude the communication, the mixing and the associations of these identified serious organised crime figures, particularly within the organised crime of outlaw motorcycle gangs. We believe that, by bringing in laws that are not so complex and complicated as RICO and others, once you break up the associations and you prohibit that from occurring, and you start to impose regimes whereby a breach of a non-association order could render you unable to get bail, for example, it is going to

become a very powerful tool to allow law enforcement to start to break up the strength which is held by these organised crime groups.

CHAIR—Update it.

Assistant Commissioner Harrison—Yes. Consorting in South Australia is still on the books—if you consort with a reputed thief, prostitute or a person with no visible means of support. That is where it stands today, which is very archaic. We are suggesting bringing that into the 21st century and calling it 'criminal association'—renaming it—and including things such as 'violence' and 'serious drug'. We are looking at making it an offence to consort with a person subject to a control order. So if you take out a control order or a prohibition order, an anti-association, order against an individual, particularly looking at outlaw motorcycle gangs, it will become an offence to actually consort with the person who is the subject of the control order. We are taking the approach of looking at bringing in control non-association orders to target the hub of the organised crime networks—the inner sanctum, if you like, which is the difficult area for law enforcement to infiltrate—but then use the consorting updated regime to attack what I call the tentacles, the hangers-on, the street gangs, the prospects and the nominees of outlaw motorcycle gangs, to preclude them from being able to continually associate will full members of outlaw motorcycle gangs or higher ranking people within serious organised crime groups. I advocate that you need to have a multipronged approach, because, in going for RICOs, my view, in light of the New Zealand and Canadian experience, is strongly that we will end up in two or three years in the courtrooms and, at the end of the day, these people will be there laughing at us.

CHAIR—Do these laws include an updated kind of consorting—by the internet—as well as, say, meeting on a street corner? Have you considered that? The other thing—and you might answer both of these together—is that we heard evidence about the triad laws in Hong Kong and elsewhere, where even claiming to be a triad is an offence. Is that something you have looked at as well?

Assistant Commissioner Harrison—We certainly have looked at it. In answer to your first question about bringing into the 21st century consorting into a criminal association regime, we will certainly be looking at things such as voice over internet, telephones, the internet itself, person to person—we will try to capture all those associations to make sure that it is contemporary with the way people communicate today. Secondly, on the triad type legislation, what we are suggesting in South Australia, and the advice we have provided to government—and the Premier has gone public on it as of yesterday's press conference—is that we do not disregard the anti-gang type legislation, which is the RICO, but maybe in the second or third phased approach we try to expedite the way in which we infiltrate serious organised crime. So we are suggesting to the government that we need some hard-hitting, quick approaches, which we think include the control order, the non-association consorting type regime plus a number of others, and behind that we should be diligently working away at developing legislation which maybe is not quite as complex and as difficult as RICO type styles of regimes and legislation.

CHAIR—On this proposed legislation, has someone been given the green light to go ahead and do this?

Assistant Commissioner Harrison—I can say that the South Australian cabinet endorsed the development of this yesterday morning. There is a working party and a senior reference group, together with police and Attorney-General's and others. The expectation from our government is to have the first phase of this legislative reform ready for probably September-October this year into parliament.

CHAIR—We will watch that with interest.

Senator PARRY—On recruitment, we have had a variety of evidence before us concerning difficulty in recruiting police and retaining experienced police officers. In particular, a lot are moving into the Australian Federal Police, so the difficulty does not necessarily lie there; there seems to be depletion at the state level. Could you comment, please.

Assistant Commissioner Harrison—It is definitely the case in South Australia. We have, like all states, very low unemployment. I think we are in the 4s at the moment in South Australia—4.1 or 4.2. We are recruiting from the UK. We are about to bring over 110 police recruits in the next 12 months from the UK.

Senator PARRY—Where does that leave the UK? Are they then in the same situation? Is it a worldwide movement of policemen around the world?

Assistant Commissioner Harrison—I would not suggest so. I was in the UK in 2004 for three months with Kent Police. There are about 155,000 police across the 43 forces in the UK—England and Wales—and more in Scotland. They do not seem to have issues—certainly when I was there in 2004—about recruiting police. You would be aware that in all state police agencies there are increased establishment numbers occurring. We are increasing by 400 over four years. We are in year 2 of that recruitment process now, and I know that Western Australia, Queensland, Victoria and other states are similarly going through the same process of increasing their establishment numbers.

The Australian Federal Police and ASIO, security industries and the Australian Defence Force are all on recruitment—and all looking for a similar sort of person, I would suggest, in many cases. It is difficult. We have recruited I think over 280 UK recruits in the last two years and we are bringing in another 110 this 12 months. We are having significant difficulty recruiting locally. We just cannot get people through the front door with suitable qualifications and skill sets to meet the recruitment standards. It is an issue for us.

Senator PARRY—And you are losing officers to the AFP?

Assistant Commissioner Harrison—I hope none of my colleagues' friends are in the background. I can say that both the ACC and the AFP, dare I say, are poaching our good people by the droves, because they are increasing their numbers. Some of our analysts, in particular, and some of our technical crime scene people are moving towards the ACC and AFP. We would like to hope that they would see better at the end of the day and come back to us—better working conditions and a nicer regime to work within—

CHAIR—Nicer people, too!

Assistant Commissioner Harrison—Nicer people and all those sorts of things.

CHAIR—You can leave by this door!

Assistant Commissioner Harrison—The positive is I guess that it is good to share skilled people across law enforcement because people learn and develop skills and bring them across and cross-pollinate. There are some positives but it is certainly making the job of state police services more difficult in the retention of skilled people.

Senator PARRY—Thank you, Assistant Commissioner. Can I just commend you on the quality of your evidence. It has been very succinct and very informative. Thank you.

CHAIR—I have two very quick things. The New South Wales Police told us that they had lost police to the federal agencies but they are coming back. So you may be comforted with that. Also, the AFP have denied they are poaching; they just say they have all these applications. That is just to keep the record straight.

I note your submission talks about a lack of understanding of how effective ALIEN is, and I do note as well that you indicate that including births, deaths and marriages, driver's licences, utility accounts et cetera would be very useful. I only mention that to get that on the record and particularly acknowledged that.

What I did very quickly want to raise with you is an initiative or a suggestion that has come from the South Australian Police, as I understand, in relation to proving matters beyond reasonable doubt in very complex corporate and technical issues. It somewhat appeals to me, although I must say I have raised it with many others and have not had anyone yet prepared to be very enthusiastic about it. Can I just get your perspective on that? Where is that at?

Assistant Commissioner Harrison—A view in relation to proving something beyond reasonable doubt versus the balance of probabilities?

CHAIR—Yes, or some standard that is not quite beyond reasonable doubt. This is in complex corporate and technical issues where juries, I suggest, tend to be from the lower socioeconomic groups and find it very difficult—this applies to politicians, certainly including me—to follow through, and trying to get convictions beyond reasonable doubt makes it very difficult. I am just wondering what your approach to that is and where you are at with it?

Assistant Commissioner Harrison—I will preface this by saying that these are my personal views. I think there is a place for proving beyond reasonable doubt. If a person is potentially subject of serving a term of imprisonment—and sometimes a lengthy one, particular nowadays when you look at the drug regimes around Australia—I would be an advocate of proving beyond reasonable doubt. I think that is a sound, fundamental principle of law.

When it comes to things such as unexplained wealth and the confiscation of profits—unexplained wealth is one key area and, as a result of this legislative reform process, we are looking at unexplained wealth legislation following the experience in Western Australia and Northern Territory—there is certainly a place for 'on the balance of probabilities'. When you look at things such as unexplained wealth and money trails, I think it is a reasonable

fundamental principle to have to prove something on the balance of probabilities and not have to go to the extent of 'beyond reasonable doubt' because it will become too complex and the law will be made an ass because we just will not get to that threshold. So I think there is a place for both principles. I would once again appeal for a harmonisation of legislation in the area of unexplained wealth and confiscation right across the Commonwealth, states and territories. There is no doubt about it: serious organised crime exists because of wealth development. It would be a key investigative tool, from the perspective of disruption as well as long-term infiltration, to get this approach to unexplained wealth right across the country.

CHAIR—I think we would all endorse what Senator Parry has said about your evidence and we thank you for making yourself available today.

[10.43 am]

BRADY, Mr Peter, Senior Legal Advisor, Australian Crime Commission

BOULTON, Mr William McLean, Examiner, Australian Crime Commission

MILROY, Mr Alastair, Chief Executive Officer, Australian Crime Commission

OUTRAM, Mr Michael, Executive Director, Operational Strategies, Australian Crime Commission

POPE, Mr Jeff, General Manager, Commodities Methodologies and Activities, Australian Crime Commission

PURRER, Mr Edward, Acting Chief Information Officer, Australian Crime Commission

CHAIR—Welcome. Thank you for your written submission to the inquiry. If you read the transcripts of these hearings you will see that your organisation is universally held in high esteem across all areas of law enforcement and associated industries. I congratulate you on the work you do. Our inquiry has revealed some interesting angles which we want to share with you and get your comments on. You have all been before committees a number of times, so I will not go through the formal advice on how we operate, except to re-emphasise that these are parliamentary proceedings and evidence is protected by parliamentary privilege. If there are issues you think it would be better not to discuss in public, we can go in camera to do that. I now invite you to make an opening statement.

Mr Milroy—The ACC values the important dialogue that has arisen through this inquiry. It is through this varied and informed debate involving law enforcement agencies, academia, politicians, the legal community and concerned citizens that Australia can better arm itself to combat the continuing scourge of serious and organised crime. The ACC has provided a written submission to the inquiry which we believe was comprehensive, and I do not intend at this stage to restate the contents of that document. However, I would like to highlight a few items that may help the committee to focus its inquiries today.

In relation to information sharing, it is important to point out that under the act one of the main functions of the ACC is to collect, correlate, analyse and disseminate criminal information and intelligence and to maintain a national database of that information and intelligence. The ACC notes that throughout the inquiry the committee has focused on a proposal to develop a central national database or an integrated service to interconnect disparate databases for the delivery of risk related information for the use of police personnel nationwide. I believe that the continued enhancement of the ACC's database, ACID—you heard yesterday from the CEO of CrimTrac about the enhancements that they are undertaking in relation to their systems—and the work underway to ensure interconnection of the two databases will address current and future needs. I would like to point out the work that has been done within the ACC to improve this interconnection. In this regard, we would like to work at developing and implementing the

national intelligence-sharing framework through the standard intelligence exchange format, which we refer to as the SIEF project.

The government's independent review of airport security and policing, conducted by Sir John Wheeler, noted that ACID appears to offer the best platform to incorporate data on criminal intelligence and, in the future, convictions from each jurisdiction. ACID should also incorporate all relevant customs data. This will require all jurisdictions to input criminal information and intelligence data into ACID in a timely, consistent and complete manner. In response to Wheeler's recommendations and following an agreement by the Council of Australian Governments, the government allocated $6.9 million in the last financial year and following into this financial year for the ACC to conduct the SIEF project. The SIEF project aims to further enhance engagement with ACID through the development of a nationally accepted format for the sharing of intelligence information. SIEF will achieve this by facilitating information sharing through ACID by standardising file types, providing a standard mechanism for sharing information which will assist in increasing the types and volume of data held in ACID and providing resources to law enforcement agencies to provide information management and dissemination not only between their databases and ACID but also between their databases and those of other jurisdictions.

CrimTrac, as you heard yesterday, is a provider of information to jurisdictions. CrimTrac's role is complementary to the intelligence function provided by ACID. The analytical tools provided in ACID allow users to draw out value added intelligence about risky individuals and entities to the interest of law enforcement.

The information provided by CrimTrac is also sought by the ACC to inform the intelligence in the ACC database, and this will be achieved through continuing work with CrimTrac through the SIEF initiative. The ACC is working in partnership with CrimTrac to ensure that relevant criminal information and intelligence derived from their systems can be electronically and systematically uploaded to ACID to allow law enforcement nationally to draw out information using ACID's sophisticated analytical tools. Through greater interconnectivity to ACID achieved through the SIEF project, including engagement from jurisdictional partners, CrimTrac, the private sector and other important stakeholders, and continuing to enhance the relationship management processes within the ACC, ACID will continue to provide an enhanced tool to inform criminal information and intelligence processes nationally.

As part of the process to enhance ACID, I would like to share with you some of the work we have been doing in relation to future technology. In April this year members of the ACC travelled to the United States, Canada, the UK and parts of Europe to gain a better understanding of new technologies used by law enforcement to improve information and intelligence management and the latest innovations in intelligence analytical software. ACC members spoke to various private industry organisations and law enforcement agencies and obtained useful information on the effectiveness of various information sharing and analytical tools currently in use by law enforcement agencies in a strategic and tactical environment. The ACC is currently preparing briefs to inform and advise of the tools available and will seek advice on their potential benefit to both the intelligence and operational law enforcement environment in the Australian context. The ACC intends to provide the Attorney-General's Department with a submission on new technologies to progress these opportunities to continue to enhance our system and other systems in the country.

In relation to task forces and other methodologies to deal with serious organised crime, I would just like to share that the ACC does use a task force methodology, which has been approved by the board in consultation with partner agencies, to disrupt serious organised crime in Australia. One of those task force methodologies we are currently applying is in relation to outlaw motorcycle gangs which continue to be a significant threat and form a substantial part of the criminal landscape in Australia. The outlaw motorcycle group task force aims to further develop a national intelligence picture of the membership and serious organised criminal activities of outlaw motorcycle gangs. This will be used to assist operational responses by the various Commonwealth, state and territory law enforcement agencies and better guide appropriate policy action.

The task force is currently working closely with the jurisdictions to address the pervasive influence of outlaw motorcycle groups and is able to use the ACC's coercive powers to support national investigative and policy activities. The task force is currently engaged in a dual strategy of national information and intelligence coordination facilitated by the ACC's ACID and ALIEN database, and specified targeting operations are currently underway in an intelligence probe across all jurisdictions. This is being done in cooperation with the Commonwealth, state and territory police forces.

The Ministerial Council for Police and Emergency Management recently resolved to establish a working group to report on current measures to combat outlaw motorcycle groups and make recommendations on possible proposals to enhance police and legislative responses. This working group is considered by the ACC to be part of an appropriate strategy for effectively dealing with the threat of outlaw motorcycle groups and it will facilitate a more coordinated approach across Australia, improving intelligence, prosecution and regulatory outcomes. The ACC is well-positioned to provide advice from an intelligence and operational perspective on legislative proposals aimed at strengthening the ability of law enforcement to respond to outlaw motorcycle groups and other serious organised crime activities. The ACC also wishes to respond to criticism concerning the release of the public version of the ACC's picture of criminality in Australia. We are in the final stages of developing a paper, which is termed *Organised crime in Australia*, following extensive consultation with our partners and this will be delivered to the ACC board this month for their consideration for release to the public.

In relation to some recent challenges, I am very pleased to announce that, in relation to Operation Wickenby, again we have been successful, and this reinforces the robustness of the ACC's legislative basis. In conclusion, we hope we have anticipated some of the committee's initial areas of inquiry this morning and we welcome further questions by the committee. I have got some of the subject matter experts with me this morning to assist the committee in any of the specific areas of the committee's deliberations.

Mr HAYES—Thank you for your submission and your opening statement. I think that it has been very healthy to have the number of interested people appearing, particularly operational policemen. One thing that has been coming through reasonably strongly, as you can see from the transcripts, is in relation to the database. Once your SIEF system is up and operating, will you effectively be able to draw upon the amount of intelligence collected by the states in their respective databases?

Mr Milroy—Yes. Since the ACC first started, as you noticed from our annual report, there has been a progressive increase in the use of ACID and also in the uploads of ACID not only from law enforcement agencies but also in relation to the work that we have been doing with the private sector to capture intelligence which has been unknown to police. It is pleasing to see that that increase in uploads and use of ACID has continued at a higher percentage rate each year. We believe that with the rollout now the SIEF project, where we have now got all jurisdictions at various stages of completing the work and getting the SIEF framework in place, we are very confident that this increase in data into our database will continue. It allows us to get a greater knowledge of crime and also, of course, allows the jurisdictions using our database to access the very sophisticated analytical tools which allow some sophisticated data analysis. This will also, of course, benefit not only the work of the ACC but also all our partner agencies. Mr Purrer could probably provide you with a bit more detail in relation to how that progress has been going. We are very confident that we will see a significant increase now that SIEF has been put in place.

Mr Purrer—With the SIEF project I think it is important to understand that we are not talking about a specific computer system. It is a way to exchange information. We set up the standards and that is how the information is therefore exchanged. We are not asking the law enforcement agencies or our partner agencies to alter any of their systems but rather to have a look at the information in their systems and put it into a common format—which we are calling the SIEF—and then that facilitates the exchange of information into and out of ACID. We have had some good success with all our partner agencies from the states and the Northern Territory police. As Mr Milroy alluded to, they are all coming along very well at various stages and we are expecting a few of the state police services to come on board very soon with the exchange of information into and out of ACID via the SIEF.

Mr HAYES—There are no residual issues about privacy provisions in any of the states or territories?

Mr Purrer—No, none whatsoever.

Mr HAYES—Another thing that has emerged pretty generally from the operational policing point of view of state and territory police officers is the expansion of the role of CrimTrac. It is a position highly supported by the Police Federation of Australia as well. I would be interested in your view. I know that you are a Commonwealth agency but is CrimTrac a body that we as a Commonwealth should invest more into to provide what are possibly seen as necessary tools of trade for contemporary policing? If anything, what has been emerging from an operational police perspective? Is it moving towards the usability not necessarily of a single database but certainly of an intensive police operational database?

Mr Milroy—I think the role that CrimTrac is performing—and I think you heard from Mr McDevitt yesterday—is being progressed and enhanced. I think he indicated some additional areas have been progressed following the meeting last week of the working group. But there is this issue to do with the continual enhancement of CrimTrac in the role that they perform in providing information solutions for law enforcement. We, of course, deal with criminal information and intelligence. As I indicated earlier, as CrimTrac enhances its system and is able to gather more information, whether it is to do with vehicle number plates or other pieces of information that are relevant to law enforcement, we can draw on the intelligence through the

connection between its system and ours so that the intelligence can come into the ACC database where we have a greater capacity with sophisticated tools to analyse and identify crime types and organised crime groups. The jurisdictions can access that information through ACID, so the dual system, as I indicated earlier, is working and will continue to be enhanced over the next few years.

Mr HAYES—Is there even a greater role to look at it in terms of developing databases as a policing tool in regard to prospects of organised crime having linkages with terrorism?

Mr Milroy—Currently in relation to linkages with terrorism, the agencies responsible for investigating terrorism have access to the databases.

Mr HAYES—For instance, in being able to track a vehicle through a vehicle registration identification system, as used in Victoria. Would that be of benefit if that were available to everyone, including the ACC, in an operation?

Mr Milroy—It would. I think Mr McDevitt may have commented yesterday on the vehicle recognition system that is currently being scoped. We are going to be working with them in relation to what intelligence can be drawn from the capturing into our database of that information on vehicle movements which would then link up with information that we hold on individuals or on vehicles being used in organised crime. So that connection and the transfer of the data is something that we will be working on together in relation to the development of their project.

Mr HAYES—Would that be regarded within the criminal intelligence community as quite a valuable piece of intelligence gathering?

Mr Milroy—Of course. As I indicated, it is a seamless process. There are no technical, cultural or any other barriers to the two databases performing their functions and the connection to allow what needs to be transferred from one to the other to be able to be accessed by the broader law enforcement environment.

Mr HAYES—One of the things that took us aback a little was in the A-G's submission. They indicated there were certain cultural impediments to building criminal intelligence databases in various state or territory jurisdictions. I think throughout this inquiry we as a committee have not seen issues of cultural impediments to policing and trying to develop these databases or to having material submitted to these databases. If anything, it is the reverse. All the operational coppers who have appeared before this show have indicated they want better tools and more resources to go out and do their job—to fight the crooks.

Mr Milroy—That is right. We indicate clearly that there is a need to share. In our work across all the jurisdictions we are seeing the realisation of the importance of the need to share. The only way you can share the intelligence is for it to be in one system. That will allow all of the jurisdictions to gain access to the information contained in the system, which of course can compartmentalise sensitive information whilst operations are ongoing, and for it to be made available to all jurisdictions.

In relation to the cultural issues, I think they probably have more to do with that fact that, if you deal with collecting information from the ground up, there are processes that have to be put in place, because the greatest failure is the human failure. It is the inability of individual intelligence collectors to understand what they are collecting, how it should be collected and how it should be then inputted into a database. Even if that database has a connection through to the ACC's database, you still fall back to ensuring that people are properly trained in the importance of collecting intelligence and that there are processes put in place in all jurisdictions to ensure that what is collected is then put into the system to allow it to be accessed, analysed et cetera. I think that the cultural barriers you are talking about have a lot to do with individuals and the processes that are required to be put in place to ensure—

Mr HAYES—I thought it might have been the cultural barrier between lawyers and police officers.

Mr Milroy—No.

Mr HAYES—Maybe that was just me being mischievous. One of the other things that has come out has been criticism that we have inconsistency in some of our laws—particularly, for instance, the inability to phone-tap in Queensland and the inability to have targeted operations conducted by the local police force in the ACT—creating loopholes that can be exploited by organised crime gangs. Does the ACC have a view about how our respective criminal laws are overlapping? Do we have holes which are affecting contemporary policing? Is not being able to phone-tap in Queensland a real issue, from your perspective?

Mr Milroy—I do not think that it is appropriate for me to comment on laws that fall under state jurisdictions.

Mr HAYES—We will give you an exemption.

Mr Milroy—When dealing with the relevant organised crime investigations that are approved through the board determination process and the relevant joint operations that we undertake, we are not encountering at that level problems about what a jurisdiction can and cannot do in terms of the fact that we are dealing with this from a national perspective and we use the relevant powers that we have available to target the relevant groups in a specific area.

Mr HAYES—But that means that an operation has to be conducted by the ACC to be able to do that legitimately in Queensland as opposed to the Queensland police force, in this instance, targeting organised crime itself.

Mr Milroy—That is correct. We do not get involved in the issue of what the Queensland police are doing on a day-to-day basis and whether or not they have these powers. But, in terms of the partnership arrangements where we are working on an organised crime syndicate that is operating in Queensland—and we do a lot of joint operations in Queensland with the Queensland police and the CMC—we use our powers and they provide their resources. We overcome any particular difficulty that may arise, whether it is in that jurisdiction or another jurisdiction, as long as we are operating within the law and using the available resources. It is a matter that has been discussed at length in the Queensland environment and I think that it is for

them to comment on whether they will have those powers or not. Similarly with controlled operations in the ACT, it is not for me to comment.

Mr HAYES—I applaud your diplomacy.

Mr Milroy—I have not been involved in any of the detailed discussions to understand what, if any, the issues are on why they do or do not have those powers.

Mr HAYES—I will put it a different way: what is it that we as committee that will make recommendations should be looking at? We are addressing serious and organised crime—what are the things that we should be specifically looking at? I have just identified two areas which have come up during the course of this inquiry as possible holes in the armoury that we use to fight organised crime, but if you do not think they are issues then perhaps they are not something we would care to make a recommendation on either. You can put it as diplomatically as you like but, quite frankly, we do need to be proactive in resourcing our law enforcement communities, and that includes the ACC, in their efforts to fight serious and organised crime. I just think that, in appearing before this body, you can afford to be a little more forthcoming on what we should be addressing and what we should be doing to assist operational policing of serious and organised crime.

Mr Milroy—As I mentioned to you earlier, the working group that the relevant ministers were attending has been formed to look at the problems to do with not only outlaw motorcycle groups but also organised crime. So it is not just about outlaw motorcycle groups. We have been invited to be part of that working group to look at, as you have indicated, what can be done to strengthen the attack on organised crime. I have had a similar dialogue with the authorities in the UK to come an informed judgement about the problems concerning organised crime. They have identified the need to understand the economic and social cost of organised crime—a bit of work has been done in this area, but a lot more work could be done to fill in some of the gaps—and the value of organised crime markets, which is about the revenue derived by organised crime in pursuit of illegal activity. What I am talking about here is the value of the illicit good to the criminals rather than the replacement cost. To deal with organised crime, to assist in forming policy and to have better operational responses, you have to look at the problem itself and understand organised crime markets.

One thing we have learnt in the last few years is that, if we are going to try to advise the board and, through it, the joint management committees of the jurisdictions on how to better attack organised crime, we have to understand it. We have spent a lot of time trying to identify, first of all, who is causing the greatest level of threat and harm in the community. Those are the emerging groups, the middle-class-level groups and the high-threat groups. By identifying them, what markets are involved and why they are in those markets, we are in a better position, from a police point of view, to work out what the appropriate tactical option is to put them out of business.

It is quite clear that some research could be undertaken by others more qualified, including academia. To become more informed about organised crime, we need to identify some of the gaps in terms of the economic and social cost of crime and the value of the organised crime markets. We need to have an understanding of organised crime markets. Other countries have realised, too, that to have the appropriate legislation in place or give the appropriate advice to

law enforcement, you have to spend a bit more time understanding why crime organisations operate the way that they do. Why do they pick these markets? What is the financial benefit? Could things be put in place as a barrier to stop them moving into these markets? Then, of course, the consequences are that, if they cannot operate in that market, they will move into another market. What is the most logical market they will move into? A lot of that work probably needs to be done by others more qualified. As you know, academia has done some work that looks at the characteristics of organised crime. But even our partners in the UK have acknowledged that a lot of that work needs to be done by others to give us better advice on what can be done from a government point of view in tackling organised crime.

Mr HAYES—It strikes me that, to some extent, we should be addressing best practice. What is the best arrangement that we can have consistently across the Commonwealth to fight serious and organised crime? Some are looking at RICO provisions and others are looking at enhancing consorting laws. Yet, 12 or 13 years ago, police ministers, in particular, and police commissioners agreed to development a common criminal code. That is probably still a far-off project, but when it comes down to laws about serious and organised crime, does that fall into the same category as developing the DNA database? Are these the sorts of things that we should be looking at and putting some emphasis on to try and get some commonality across all policing jurisdictions in the Commonwealth?

Mr Milroy—From my observations as a member of the board and also from the discussions that have taken place at the intergovernmental committee, I think there is a very strong partnership in place to look at the relevant methods that need to be applied to fight organised crime from a national perspective. That is becoming quite clear from all the discussions. As you know, with organised crime, once you are successful in targeting specific groups, they learn from it and change their methodology. It is an ongoing cycle of us trying to learn from their various operations, looking at the intelligence, identifying the methodology that they are using and looking at how their businesses are structured. Organised crime is a business. Some of the people who run them are just as good at it as people who run businesses in the private sector. It has become quite clear that the way to attack the high-risk groups in Australia—this is a universally agreed approach by all of the jurisdictions, and we are progressing down this way—is to profile them properly, identify their business and what markets they are involved in so as to fully understand what they are doing. We need to look at their areas of vulnerability and target those with the appropriate resources, which we are doing, but go after the money, break their businesses and make them bankrupt. That is the approach we are taking at present. When we do that, they of course learn from the experience and try to counter law enforcement's proactive measures. We then have to look at changing our approach accordingly and, if need be, advise governments that we need to strengthen this or that or we need more powers. So it is very difficult to answer your question specifically, but I think it is something about understanding the market and then looking at what changes, if any, need to be applied to gain the best and most effective outcome.

Mr HAYES—In any event, it is going to be a common market across the country. It will not be just one market applying to one state or territory. It will require some form of common application.

Mr Milroy—I will only talk about a specific law enforcement point of view here. Under the current board arrangement, we have been running a number of national action plans. We are

running a national plan of action in relation to a number of areas to do with, for example, Indigenous crime, drugs et cetera. That is a whole-of-agency approach. The strategies are agreed. We are targeting under this national plan of action and putting in all of the relevant powers and resources that we can at the problem area. That is the law enforcement approach at the present moment, which is working.

Three years ago, we did not have national plans of action, but they are now becoming more prevalent. The task force model is now being used. We are seeing more and more multijurisdictional type approaches. I do not think there is such a thing as organised crime being just in New South Wales and not somewhere else. They are being attacked under a national approach. Where we need further assistance with more powers or by extending our capability, we will identify what it is, because it changes according to the way that criminals change their method of operation.

Yesterday, I noticed Commissioner Keelty talking about how criminals have changed the way that they are using technology. People from overseas can commit crimes in Australia just by manipulating the internet or by using other methods. We have to be more flexible and responsive to the changing criminal environment and the methods used by criminals. It will not be some static change in legislation today that will resolve the problems of tomorrow. We have to be constantly vigilant to the changing environment. Fortunately, we have the opportunity to come before committees like this and governments and say: 'We need more powers. We need more systems. We need this because criminals are becoming too advanced.'

Senator PARRY—Mr Milroy, you indicated in some of your remarks earlier that the greatest failure is the human failure. How do you address internal corruption issues? Do you have a unit inside the ACC that looks at internal corruption?

Mr Milroy—Yes. We have a professional standards area as well as another area that looks after complaints management. We also have a process of random audits which are conducted across areas of risk. There is a very strong emphasis on compliance. We have an internal audit capability. This unit looks at the areas where we believe we could be at risk—whether that is to do with the execution of warrants, drug seizures, seizures of cash et cetera. Any instances where there is a complaint or an issue that may be of concern is immediately referred to the Commonwealth Ombudsman and the new ACLEA. In relation to the random audits, we also carry out what we call corruption resistance reviews, which look at best practice in places like the Police Integrity Commission, ICAC and others. We have developed what you might call ACC specific corruption resistance audits, which are carried out by independently qualified experts that we bring in from outside of the organisation. They go in and target areas that we believe are at risk. We feel that that makes the staff more aware of these issues.

Senator PARRY—Could organised crime infiltrate the Australian Crime Commission by just having one senior operative working for organised crime within the system, or would it take more than one officer?

Mr Milroy—In any organisation, a staff member could release information that they are not allowed to release to criminal sources or could try to thwart any operations. No-one can ever be confident. That is particularly the case with the ACC, because 84 per cent of our operations are in partnerships and we engage with a variety of agencies and most of the staff have never met

each other before. They come together on an operation. There is a wealth of sensitive information available to a raft of internal and external resources. Fortunately, after 4½ years we have not had an operation compromised so far as we know. That is a testament to probably the systems and—

Senator PARRY—It is a very good record.

Mr Milroy—the management.

Senator PARRY—Do you have any senior management asset register or declaration of assets?

Mr Milroy—Yes.

Senator PARRY—How far does that extend down the management pole?

Mr Milroy—When you apply to join the ACC there is—under the 'highly protected' arrangement—quite a strict set of papers that you have to fill out about all of your assets. You have to declare all of your assets and quite a lot of other complex personal information which sometimes takes a considerable amount of time to complete. That is carried out under the Commonwealth highly protected arrangement. Then there is a review carried out of that arrangement and you are required to advise if there are any significant changes to your assets.

Senator PARRY—Thank you. There is no suggestion at all that we feel as though the ACC is compromised, but it is good for us as a committee to hear that these processes are in place. In particular, it is good to hear that there are random audits. I want to move back to your comments about ACID and in relation to CrimTrac. The original concept—and Mr Hayes touched upon this—we got from other agencies was that there was no centralised clearing house for information. CrimTrac clarified that through the AFP yesterday. They act as a central clearing house and by the middle of next year they are hopeful that the persons of interest register would be fully expanded and rolled out in each jurisdiction. What you were saying this morning indicated that you would like to see ACID stand alone and CrimTrac not necessarily be a clearing house for ACID but ACID be a clearing house for all jurisdictions. Did I understand you correctly? We really need to clarify where agencies stand in relation to the database accessibility. Do you see that there should be a stand-alone system for ACID and a stand-alone system for CrimTrac, with CrimTrac—and these were your comments—to pass on information of an intelligence nature to ACID for ACID to then disseminate?

Mr Milroy—That is correct.

Senator PARRY—So CrimTrac's view, I think—and maybe we need to examine the *Hansard* and talk to CrimTrac again—was that they would be the central clearing house for all data for all agencies. You are saying that is not the case.

Mr Milroy—I think they are talking about the clearing house for the information that they currently hold. They are not suggesting that all the holdings within ACID of criminal information and criminal intelligence should be transferred across into CrimTrac and they should be the clearing house. I do not think that is the case.

Senator PARRY—Do you see that working? ACID is a sophisticated tool. Do you see that working with you disseminating information of an intelligence base and CrimTrac more of a records base?

Mr Milroy—That is what occurs now. They do not have the sophisticated analytical tools and they are not the criminal information and criminal intelligence database for Australia.

Senator PARRY—You also mention that criminal records would be available through ACID. CrimTrac are going to have criminal records available for police jurisdiction in real time. So an officer on the street via laptop or telephone communications could ascertain records instantly from CrimTrac. You are saying you are going to duplicate that.

Mr Milroy—That was one of the recommendations in the Wheeler report. As you know, the government tasked the ACC to pursue those recommendations. We will be working with CrimTrac in relation to interconnectivity in the transfer of information as to what is relevant to come across to the ACC database which is then available to be analysed and available to all the jurisdictions. Mr Purrer might be able to clarify that point if you wish.

Senator PARRY—Just before that, are you in constant communication with CrimTrac? Is there regular dialogue about the use?

Mr Milroy—Yes.

Senator PARRY—Is there common agreement about what you have indicated to us this morning?

Mr Milroy—That is my understanding, yes. In relation to, for example, the new vehicle recognition, I spoke to the CEO of CrimTrac and he will be writing to me. My staff and their staff meet on a regular basis in relation to the information that they have in their system that is relevant to be transferred across into the criminal information and criminal intelligence database that can then be analysed with the huge amount of information that we have to assist not only ourselves but also all of the users of ACID.

Senator PARRY—It just might be my interpretation—I will certainly review the *Hansard* in relation to CrimTrac evidence as well—but an ongoing theme all the way through our inquiry has been database accessibility, interconnectivity and who is managing what, so we really need to have a good handle on that.

Mr Milroy—I think it is this issue of defining the information that CrimTrac holds in their system and what they intend to be holding in the future.

Senator PARRY—My understanding is that they do not hold much information; they simply access state based and other agency databases and act as a central point. We now have two central points, if you like. We are going to have ACID as a central point and CrimTrac as a central point but for different information sets, I presume.

Mr Milroy—I think Mr Purrer might just qualify that.

Mr Purrer—Potentially, yes, that is correct. I think the important point to understand here is that, if we can take your example of a criminal history, CrimTrac will be recognised as holding that particular piece of information as a central point. What ACID then does is to take that particular piece of information and mix it with all the other pieces of information that we hold. Then the analysts come along using the ACID tools to make intelligence out of that information. I do not believe it would ever be the case that a police officer out on the street, for argument's sake, would need to go to two points of information depending on what the overall outcome was. If it were intelligence based, then ACID would be used; if it were a one point of repository base, then CrimTrac would be used.

Senator PARRY—I realise there will be sensitivities about the degrees of information that can be released, but will CrimTrac have access to ACID for any line of inquiry?

Mr Milroy—Not at the present moment. But they can apply for access the same as any other agency if they need to have it in relation to the fact that the information they hold is a bit specific—it is about DNA or firearms—and where we hold the criminal information and intelligence which is required to be able to pursue areas of criminal investigation and organised crime. At present, for example, we are putting into ACID hundreds of thousands of pieces of information from the private sector. What Ed is trying to show is that in the ACID database with our sophisticated tools you can analyse and look at the linkages of all the criminal information and criminal intelligence. Bear in mind that some of the police forces use ACID as their own database. The Western Australian Police and Queensland Police Service are two that come to mind. Their police forces put all their information into ACID and that is their database; they do not have any other separate system.

Senator PARRY—And apart from your own input from your own field officers and analysts you are reliant upon state based jurisdictions and other jurisdictions to input data into ACID?

Mr Milroy—That is correct, including the Commonwealth agencies.

Senator PARRY—We receive a report from you on a regular basis on the amount of uploads. Is that working satisfactorily? Is there any jurisdiction not pulling their weight with regard to that?

Mr Milroy—No, and it is very heartening after all the work we have been doing building up relationships through the relationship management arrangements. Every agency is committed to the SIEF project, and at the present moment I think there is one jurisdiction where all the work is finished and working. We believe that progressively over the next few months and into the early part of 2008 it will be fully functional and all of the intelligence that they are prepared to send through will come through into our system. In some jurisdictions where we are working they are looking to develop and enhance their own criminal intelligence in the investigative area. They are working with the ACC at present on the basis that whatever they collect should just go straight through to the ACC in any new internal system that they have to put in place to manage their own activities. It varies from state to state on the basis of the amount of work we are doing, but we are not having any difficulties at present progressing—and that includes the private sector. We are now receiving information and intelligence from the private sector that was not available to law enforcement in previous years.

Senator PARRY—How do you source that? What has been the point of contact within the private sector? Could you give examples of what particular private sector corporations—

Mr Milroy—I will not mention specific agencies, but it is in relation to the financial sector, the pharmaceutical agencies, the telcos—all those that have the problem and are subject to criminal offences.

Senator PARRY—Is this regulatory or is it voluntary?

Mr Milroy—This is under an arrangement that we have got with them under memorandums of understanding, where they are—

Senator PARRY—This is something that you have been proactive in?

Mr Milroy—Yes. After that it has to be uploaded in bulk into our database and then, of course, it is available. Certain information provided to us in confidence is, of course, locked down and not for other agencies' information. But we can draw the intelligence from that information and use it in relation to work we are doing or feed it back to the supplier of the information.

CHAIR—Going back to the SIEF project to make sure that I understand it, are you saying that the information available on various state and territory law enforcement databases is by this project being somewhat technically automatically converted to be read on your system?

Mr Purrer—Very simplistically, the underlying premise of SIEF was to ensure that we did not overburden any particular state or jurisdiction, so we had to work with the infrastructure that was already there. Basically, it is extracting the required information, putting it into the SIEF format technologically and then transmitting it through to ACID, where we know in what format it is coming so that we can then read that information and put it into ACID in a standardised way.

CHAIR—Is that somehow miraculously being done automatically or does the conversion require manual operation?

Mr Purrer—Once a program is built, it is done automatically. SIEF provides the format and it is an automatic process. Basically, a program runs to grab the required information, convert it, send it, decompose it and upload it into ACID.

CHAIR—The committee has had quite a deal of evidence from various sources and has asked questions about access to information held by telecommunications providers. Some have suggested that they are unwilling, or only willing at great cost, or that they do not have accurate information sources to provide to the authorities the sort of information that is needed. What has your experience been in this area? Do you think this area requires more stringent regulation for the purchase and registration of SIM cards? Has that been a problem for the Crime Commission?

Mr Outram—What we might call SIM card churn is a problem probably for all law enforcement agencies who are investigating organised crime. There appears to be a significant expansion in relation to the availability of SIM cards. Some prepaid SIM cards have obviously been purchased overseas. There is a lot of anecdotal evidence that some criminals have a

propensity to change SIM cards on a daily basis and use any number of SIM cards. Of course our ability to track that relies, to an extent, on the information we are able acquire from telcos. We are working with various groups, primarily chaired by the A-G's, that liaise with telcos on such issues.

It is the expansion of the offshore elements that potentially poses the biggest threat. While we can regulate and control what is in the Australian environment, when a lot of these services are moving offshore then it becomes increasingly difficult. I am aware that the Attorney-General's Department do liaise regularly and attend meetings worldwide with their counterparts dealing with these sorts of issues. They will probably be able to provide you with more information on that. But certainly the issue of SIM card churn presents a challenge when you are trying to intercept or track communications of criminals.

CHAIR—So it is a problem for you?

Mr Outram—It is a problem. It can also exacerbated by identity fraud. If there is a significant expansion of identity fraud, people using stolen credit cards to purchase SIM cards et cetera, then the data that is acquired at the point of purchase will be false. The quality of the data from the point of purchase is also potentially an issue for us.

CHAIR—It was suggested to us by South Australia Police this morning that there are even suspected or known criminals actually acquiring retail telecommunications companies. That would obviously be a very good business if they are dealing with the criminal trade. Is that something you are conscious of?

Mr Outram—We are aware of the example that has probably been referred to this morning. We have been in discussion with our counterparts in South Australia about that. It is interesting that, by legislation, any telecommunications provider has to provide an interception capability plan. So there are some issues there for discussion down the track.

CHAIR—This committee would be interested in whether there should be regulatory change or regulatory tightening; whether it is possible, even, for regulation or legislation to tighten access to or the use of SIM cards and restrict those who might become involved in companies that have access to them.

Mr Outram—Yes. I think this is an issue that the working group that Mr Milroy referred to may be looking at in relation to the range of regimes that could be thought about to prevent organised criminals from hiding assets, running what might be purported to be legitimate businesses and infiltrating legitimate areas of business, regulation et cetera. I cannot give you a definitive answer other than to say that I think we all recognise that it presents potential risks when organised criminals and criminal groups acquire telecommunications companies and things like that and it is probably something that we need to further analyse.

CHAIR—Thank you. I will now briefly turn to examiners. It is quite clear that the examiner provisions of the Australian Crime Commission have been very useful in the past and should be in looking to the future, as we are. I am interest in comments on whether there are ways that the worth or working conditions of examiners could be improved to provide for more effective use of those provisions. We heard in the previous inquiry that, when people refuse to answer

questions and thereby commit a criminal offence, the ability to get those people before the courts in a timely fashion is a real problem. I understand that there is some work being done in some jurisdictions, but I would just like an update on that and to know whether perhaps this is something that this committee should be looking at.

Mr Boulton—The principal improvement that the examiners would like to see is a contempt power—not a contempt powers proposed for the examiners, but a power for the examiners to refer issues of contempt to either the Federal Court or state supreme courts. The problem posed by those who commit contempt of the commission is delay. It has been said in the past to the committee that a year or more was elapsing between contempts being committed and the disposal of those cases in the courts. I can tell you now that it is more like 18 months. We have a particular case now where it has been more like two years. I know that there was a recommendation from this committee that the various courts should be approached and asked if they would expedite dealing with those charges. That will not happen in practice. I can give you an example. Our newest examiner came from the district court of South Australia. I raised the matter with him and he said, 'If we as judges have a docket which includes, for instance, outstanding sex cases and a breach of the Australian Crime Commission Act, we are going to deal with the sex cases long before we ever deal with a contempt of the Australian Crime Commission.' That, in my experience, would be a common view across the jurisdictions. With respect to those who had the view that maybe the state courts or the Federal Court could be hurried in this way, that was rather—

CHAIR—Naive.

Mr Boulton—Yes, without being critical, it was a naive view. A contempt provision of the sort that we are promoting would see an examiner sign a certificate which would be only prima facie evidence. You could have the offender brought before a court the same day—which happens now with the Queensland Crime Commission. It also happens in New South Wales. Within a matter of a day or two, that person could be called upon to purge his or her contempt before the court and be dealt with.

The real problem for us, caused by the delay, is that a lot of the investigations and operations go cold. It is not only that, but a lot of the investigative staff who are secondees return to their home environments and no-one is left to pick up the trail. So if you have someone who is dealt with two years after committing a contempt, that person may effectively have stymied a particular operation or investigation by that conduct. We have to say that our experience, particularly with the outlaw motorcycle gangs, is that there is an orchestrated campaign by those persons to engage in contemptuous conduct because they have received advice to do that, and it has been quite effective, in a number of our investigations, in impeding our progress.

CHAIR—Let me just get you to help us with the law. The offence is failing to answer a question.

Mr Boulton—Or failure to be sworn or to make an affirmation.

CHAIR—It would seem that that would take a court about 10 minutes to deal with; you either fail to answer a question or you answer the question. It is not something one would think the

offender could argue about before a court. The only argument would be if he said, 'I did answer it; the examiner is telling lies when he said that I didn't.'

Mr Boulton—Yes, but the Criminal Code exculpatory provisions will apply, so that if someone could, for instance, come up with the defence of duress. If someone were sufficiently streetwise in that regard that would be what I would be suggesting they might do. It is those sorts of cases which people are anticipating. But you are right; in the normal case—for instance, in Queensland, my home jurisdiction—the Supreme Court deals with these matters very quickly. They are entered in the chamber list and sometimes that malefactor will be before the court on the same day. If he or she cannot purge their contempt, they are taken off—

CHAIR—So this happens with the Queensland Crime and Misconduct Commission?

Mr Boulton—Yes, it does. It also happens with the two bodies in New South Wales, both the Police Integrity Commission and the Independent Commission Against Corruption—they have those provisions already.

CHAIR—Can you remind me of why that does not apply to the ACC?

Mr Boulton—We do not have such a provision; there is no provision in our act.

Mr Milroy—I can advise the committee that the government has commissioned a report of the operation of the provisions of the former NCA under the NCA Act and the ACC Act, and the QC has provided the report, which addresses some of the issues that Examiner Boulton has raised. The minister, in his role as chair of the IGC for the ACC, has referred the report to the IGC members for comment and, following receipt of those comments, the minister must cause a copy of the report to be tabled within 15 sitting days of each house of parliament. At the present moment, the report—about which the examiners were consulted quite extensively by the QC in completing it—is currently with the IGC ministers, and the government is waiting for their response.

CHAIR—So that is not publicly available at the moment—

Mr Milroy—No.

CHAIR—but will be tabled in parliament?

Mr Milroy—In due course.

Mr Boulton—The author of that report came out in favour of such a contempt power.

CHAIR—That is what I was going to ask you, but I thought that perhaps I should not.

Mr Boulton—Well, he has. May I say that the committee's concern in the past was the thought that the examiners themselves were asking to deal with the contempt, but they never were. They always said that it was a matter for the courts. They just wanted to be able to certify the contempt and then have the courts deal with it. If someone has a perfect defence, they will be able to raise that before the courts.

CHAIR—Is it going too far in the extreme and are we getting to the real big brother society to consider giving examiners the power to jail and penalise? Is that going a bit far, do you think?

Mr Boulton—There is a constitutional problem, and that is the fact that we are only quasi-judicial officers and we cannot exercise the judicial power of the Commonwealth, even if I might say we would like to.

Senator MARK BISHOP—Last evening, Mr Milroy, we had some evidence from Customs. They have identified some problems in getting TIs when they are pursuing matters. They said that the significance of some of their work had increased demonstrably in more recent years and that they had to rely on other agencies—AFP, state police forces or whatever—to get TIs from the courts. This was causing delays to them because their priorities may not be the priorities of the other agencies. In your experience is there any reason why Customs, to some extent a frontline agency, should not have powers in its own right to apply to the relevant tribunal for TIs in pursuit of its objectives?

Mr Milroy—I am not aware of the reasons for Customs wishing to have telephone intercepts—and I think that would be a matter for government. In relation to the cases in which we are involved, where Customs is a partner in joint operations we of course provide telephone intercepts, if warranted, to gather evidence. You have to remember that telephone intercept legislation applies only to the gathering of evidence; it is not for the gathering of intelligence.

Senator MARK BISHOP—The point they made was that a lot of the intelligence garnished from TIs comes to them in the form of information responses but they want access to the raw data—because they have a particular view of the world and particular expertise in their domain and sometimes their analysis of raw data might be different from the analysis of another policing type agency. I understand your comment that it eventually will be a decision for government, but I am asking you, as the head of the tribunal and an expert in this area, why the head of Customs should necessarily be reliant on other agencies in the carrying out of its law enforcement tasks.

Mr Milroy—Again, I do not think I am in a position to comment on why Customs would want TI powers or any other—

Senator MARK BISHOP—I am asking you if, in your view, there is any reason why they should not have TI powers.

Mr Milroy—Again, I do not think it is appropriate for me to comment. On the basis that I have not seen any submission from Customs with arguments for or against why they should have them, I do not think it is appropriate for me to comment.

Senator MARK BISHOP—I find it surprising that you cannot offer assistance.

Mr Milroy—We do offer assistance if we are involved in joint operations where they can have TIs. It is no different from the question in relation to why Queensland does not have telephone intercepts. When I have not even seen any submission in relation to why Customs—or, for that matter, any other agency—would want TI powers, I think it is inappropriate for me to give an off-the-cuff comment to justify it one way or another.

CHAIR—I think that is a reasonable. Senator Bishop, if you do want to pursue it you could perhaps ask Mr Milroy to read the evidence given by Customs and drop us a note.

Senator MARK BISHOP—Thank you, Chair, I will take that advice. Mr Milroy, could you have a look at Customs evidence and give us a considered response?

Mr Milroy—Yes, I well.

Senator MARK BISHOP—Their request did not seem unreasonable to me, but I would be interested in a considered response as to why it might be inappropriate or unreasonable. We have had a lot of comments that there are a range of enterprises involved in serious crime—drug distribution gangs, ethnic gangs and outlaw motorcycle gangs. Geographically based gangs involved in a range of activities in Victoria have received a lot of profile. We have been advised of infiltration into legitimate enterprises such as the security industry, the prostitution industry and those sorts of things, which are in some ways regulated in the various states. OMCGs, by their nature, receive a lot of reporting in the press because they are an attractive topic. Are OMCGs, in the context of the range of groups involved in criminal activity, any more significant than the others, or is it just that they are more attractive to the media to report on? Are they really the leaders in the field, or are they just another group that is engaged in criminal activities?

Mr Milroy—They are one of the major groups that have been identified as being involved in serious and organised crime. The recent media interest is clearly because of the amount of violence that is alleged to have been committed. But they are major players in organised crime in Australia as we have indicated in our report. The targeting of organised crime groups is not specifically directed at outlaw motorcycle groups. They are one of a number of organised crime groups or networks that are operating that are currently the subject of interest.

Senator MARK BISHOP—Are they all just equals or are they first amongst equals in terms of their significance, their outreach, their growth and their penetration?

Mr Milroy—If you look at all the major groups that have been identified, there are those that we classify as high-risk groups and then there are medium-risk groups that can become high risk groups overnight, depending upon the extent of their operations. Some groups are the principal syndicates operating in particular criminal markets. Other groups provide distribution networks. An interesting point about the organised high-risk crime groups in Australia is that some of them are not just based in one state. They have a point of contact in other jurisdictions and they have a network of people who can facilitate the movement of their illicit goods or who can look after the gatekeepers of their funds—their ill-gotten gains. I think the OMCGs are mixing in that sort of milieu as principal high-risk groups. At the same time they are providing a service to others who are more prominent.

Senator MARK BISHOP—I understand. At a state level we have various standing commissions—the CCC in Western Australia and ICAC and the like in New South Wales—which have certain legislative direction as to their activities. The CCC in Western Australia, for example, has been particularly effective in highlighting public sector mismanagement and corruption, corruption at a political level and those sorts of things. We heard evidence over there that its budget is significant and that almost 90 to 95 per cent goes on public sector corruption issues as opposed to criminal issues. At a state level, are sufficient resources and powers being

allocated to those state standing commissions and is there justification as yet for a permanent national crime commission agency to be established and funded to carry out its duties?

Mr Milroy—We are the national—

Senator MARK BISHOP—I am sorry, I meant a public criminal agency that would engage in investigative work—on the model of ICAC or the CCC—in the serious to organised crime area, as opposed to your particular role.

Mr Milroy—Under our rules we can deal with corruption of public officials. Each state has set up its bodies for specific reasons. The CMC has a corruption and an organised crime role. The New South Wales Crime Commission specifically deals with organised crime because New South Wales has the Police Integrity Commission and ICAC. The CCC, as you say, has 95 per cent of its budget geared towards public corruption. Whether it will eventually move into organised crime is a matter for the Western Australian government. With the current Australian model—there is, of course, ACLEI to deal with corruption matters to do with law enforcement—the working arrangements at present pose no barriers, in our view, to working with these agencies, which we do on a frequent basis. On most occasions they are part of the joint management group that brings the Commonwealth and state agencies together with the ACC in a jurisdiction to look at targeting organised crime.

Mr Outram—Probably the main difference in some areas is that we do not conduct our examinations in public.

Senator MARK BISHOP—Correct; that is what I am driving at.

Mr Boulton—We would seek, I suppose, to educate through other means—through communications in documents or whatever. There is a public version of the document. But other than that there is no significant difference in the way that we operate. Examiner Boulton might have a view on that.

Senator MARK BISHOP—It is that publicity-generating role of those state criminal or public sector corruption commissions that seems to generate a lot of activity—prosecution and reform—because of the attractiveness of the process to the media. I am really asking whether that angle, if you like, in terms of your agency or a like agency might now be becoming more attractive in light of the demonstrable shift of organised and serious crime across state borders on national issues and with international linkages.

Mr Milroy—I think it is a good point. With the release, subject to the board's approval, of this public version of *What is organised crime?*, we are trying to explain to the public that this is the extent of organised crime in Australia, this is what we mean by 'organised crime', this is how pervasive it is and these are the areas it is going into. We are trying not only to raise those awareness levels but also to encourage the public to come forward with additional information. So it is a point we will consider.

Senator MARK BISHOP—Thank you.

CHAIR—There is a purpose to this question in asking for some legal advice. Can anyone tell me if it is an offence in the various state or Commonwealth jurisdictions to conceal the commission of a crime or, perhaps as a second arm to that, to not report the commission of a crime?

Mr Milroy—I might ask our senior legal officer, Peter Brady, to come forward to be able to give you a clear legal answer to that question.

Mr Brady—There are offences—

CHAIR—Perhaps, in fairness, I should tell you where I am going with this. We have had a lot of evidence about fraud in the banking area, where the banks, for reasons I guess related to their own credibility, choose not to report to the authorities. I just want to explore that a bit further. But the first premise is: is it an offence?

Mr Brady—To answer your first question, there are offences for concealment. The example that you have just given is one of them. As for an obligation to report, that is a bit more obscure. There are a whole raft of requirements under the Financial Transactions Reporting Act, for example, to provide certain types of information. If you do not provide information and you had it, then there will be offences in and around that. The example that you gave is quite a good one in that regard. When you have a look across all the requirements to report, there are offences were you have signed a false declaration, filled in a form falsely—it is right across. In most legislation you will find a whole raft of offences of that type. Of course, identity fraud is a classic example of how providing false information can have more significant strategic outcomes as the criminality progresses.

CHAIR—Can I perhaps refer back to Mr Milroy or whoever is relevant. Are you able to gather intelligence on banking fraud? Is it reported to you?

Mr Milroy—In relation to a lot of the data that we have been collecting that has been unreported previously, the answer is yes.

CHAIR—'That has been unreported previously'?

Mr Milroy—Previously a lot of what you might call information about fraud that was held by private sector agencies they may or may not have thought was relevant or of interest to law enforcement. As a result of the working arrangements we have been able to put in place with those bodies, we are now receiving large quantities of data for to upload into our database to analyse and get a better understanding of the fraud environment.

CHAIR—What you are saying is that it used not to happen but it does now.

Mr Milroy—That is correct. A lot of that has to do with receiving data from a number of private sector agencies that are concerned about the confidentiality of the information and, of course, their competitors having access to it. We have been able to overcome that problem by the way in which our database can securely compartmentalise some of this information, and we are in a position to analyse it. Mr Boulton will explain where we use the notices under the special powers to gain such information and how the notices are structured to encourage these bodies to

hand over the information that they currently hold. This improves our understanding of a particular crime market.

Mr Boulton—It is timely that you raise that issue because in the last few months the examiners have issued a number of notices to banks, insurance companies and the like, seeking under compulsion—putting it generally—instances of fraud perpetrated against those bodies. We are getting a lot of information coming back. The banks and insurance companies like this method because, even though it is compulsory, it is also confidential. We see that as a very big growth area, and I think what you have touched on is quite true. The extent of it is probably much greater than people realise.

CHAIR—So you use that as an input into your intelligence gathering and it may correlate different people or groups that are involved.

Mr Boulton—Yes.

CHAIR—There were suggestions in the paper a few days ago that the banks were going to start putting the financial cost of banking fraud onto the customer. As I understand it, at the moment most of the banks pick it up themselves, do not talk about it and carry on. Nobody has any idea what it is costing the banks. I guess it is a matter for them, hence my question about whether there is an obligation to do it under law. Certainly there is an obligation if they are asked by you to do it, and that is happening.

Mr Boulton—Yes.

CHAIR—Has that been useful to the commission?

Mr Milroy—Yes. I will ask the general manager, Jeff Pope, to comment. This again adds weight to the use of the Australia Crime Commission database and the sophisticated tools that we have available for law enforcement, the growth of the information and the development of further knowledge of various crime markets. As an example, he might explain the amount of data, what the data is going to be used for and how hundreds of thousands of pieces of data are uploaded into the system.

Mr Pope—Over the past 12 months or so we have formed some very productive relationships with financial institution and, as Examiner Boulton indicated, we have issued numerous notices in cooperation with these institutions. As a result of that we have access—if I can explain it that way—to over 200,000 data sets that are previously unreported incidents of fraud committed against those organisations. When added to our current intelligence holdings and systems this significantly enhances our ability to gain an understanding of individuals' criminal activities, serious and organised crime groups' presence in the financial sectors, serious and organised crime groups' diversification of their activities and, essentially, footprints of organised crime in areas that were previously either undetected or that we only had anecdotal evidence of. We are finding it to be a very powerful and successful way in which we can value-add to our intelligence holdings, but more importantly our understanding of organised crime in that area.

Senator PARRY—Could you define a data set?

Mr Pope—It would be an instance of fraud committed against a particular institution.

CHAIR—You might have access to Senator Bishop's and my bank accounts, which would probably give you a bit of a laugh—in my case! You'd probably be impressed with Senator Bishop's. Thank you very much for your evidence. That is very good.

Very briefly: in Sydney, the committee heard from the advocates for survivors of child abuse, who argued that there should be a role for the ACC in monitoring the organised abuse of children. Do you think the ACC is the most appropriate body for that sort of work? Do you do that work? I gathered from what they said that they do not think you do. I am not sure how far I should go into this. I think it is on the public record that you have been asked by the council of ministers to do something in relation to Indigenous children.

Mr Milroy—That is correct.

CHAIR—Without asking you about that activity, do you think that perhaps there is a role for the ACC in relation to organised child abuse?

Mr Milroy—I will get Mr Pope to answer that, but for the record, in relation to the issue you raised previously, I think we should make it clear that we do not have access to, or information delivered to the ACC on, individual bank account details.

CHAIR—I was injecting a note of humour into the hearings.

Mr Milroy—I would not want it to be in the press tomorrow that the ACC is across 200,000 individual bank accounts.

CHAIR—Particularly those of politicians! Thank you for making that clear.

Mr Milroy—Okay.

Mr Pope—In response to your question: the Australian Crime Commission has a number of activities with respect to child sex offences. It is a category A national criminal intelligence priority, endorsed by our board.

CHAIR—Is category A the highest?

Mr Pope—Yes, it is. I believe it has been that way ever since we have been putting national criminal intelligence priorities to the board. Therefore, it is an offence category that we regularly monitor. We have produced a strategic criminal intelligence assessment with respect to child sex offenders, particularly in the online environment. That looks at how that criminal activity is likely to evolve over the next five years. We work closely with our partner agencies and monitor the intelligence of our partner agencies with respect to child sex offences. We have access to the Australian national child sex offender register on CrimTrac, but probably most prominently—as you indicated in your question—we have the national Indigenous intelligence task force. One of the areas of the task force that we are focusing on is child abuse in Indigenous communities. We have started widespread intelligence collection against that particular issue across Australia.

CHAIR—As I recall it, the evidence from this group—I still find it difficult to believe, although I am not doubting in any way the honesty of the person who told us—was that there did seem that there were organised groups of families involved in this. Without being too specific, is that something that you are detecting—that it is organised crime as opposed to just a spur-of-the-moment happening?

Mr Pope—Our intelligence indicates that there are organised aspects to this criminal activity. I think that exists, to varying levels, in both contact offending and online offending, but the intelligence seems to indicate that it is more prominent in the online offending, rather than in the contact offending.

Mr HAYES—Can I go back to the issue of the position of examiners. I have just been thinking that the last time we considered this, and when the recommendation was made, John Hannaford appeared here as an examiner and spoke to us in camera. My recollection is that the recommendation we made was not unwanted at that stage in terms of what was being put by examiners. We are effectively making out a case now for contempt powers. How widespread is this, bearing in mind that our focus is on organised crime? If we are going to delay having people in a systematic way enhance their defence by showing contempt and effectively prejudicing investigations and hence prosecutions, I guess that is a pretty serious thing. I am going back a little bit here, but it is my recollection that last time we discussed the powers of examiners and where that would go, it was not about examiners having the power to lock up. I think that is how we got to the position of some form of dialogue with the courts on the process in these matters. If this is not working then it is something that probably should have been brought to our attention, because our recommendation was certainly made in good faith and was one which we thought was well received. If there is a case to be made for contempt powers, I think now is the time to make it.

Mr Milroy—Just for the committee's information, 78 people have been charged with offences under the Australian Crime Commission Act to date. I agree that this was an issue that was raised previously and, since Mr Hannaford raised it, there have been discussions with the Attorney-General's Department and, of course, with the QC who was appointed to look at some of these provisions. So progress has been made. Although one might say that 78 people is only 3½ per cent of all persons examined, I think Mr Boulton did indicate that it has more to do with the significance of the individual who refuses to cooperate than the strategy behind that lack of cooperation to the ongoing investigation.

Mr HAYES—What I am doing is expressing some surprise that this is the oversight body for the ACC and, since our last recommendation on this particular subject, we have discovered that things are significantly worse. It is now a systemic application for serious and organised crime. I would have thought that this would have been something that would have been drawn to our attention well before now, and it is something we should probably have a view on going into this report.

Mr Milroy—I take your point and, if the committee would like us to provide some further information on what action has been taken since it was last raised, I am quite happy to do that to assist the committee in preparing its submission.

CHAIR—That would be useful. I think Mr Hayes's comment was a comment rather than a question, but that would be very useful. Thank you. The last question of our inquiry is on the good news story. You mentioned Operation Wickenby in passing in your opening statement. I wonder if you could update the committee on where you are at. I notice that there were some public reports in the last week and court determinations, but can you update us on Operation Wickenby. Also, if there are things that you have learned as a result of Operation Wickenby that need further focus on them from government, perhaps you could mention those as well.

Mr Milroy—First of all, Operation Wickenby is pursuing a number of criminal investigations into a number of individuals. At this stage, the committee has been advised that three people have been charged and there is a person before the court today. I am not aware at the moment how those proceeding are progressing. We have been successful in all the challenges to date. I will ask Mr Outram to provide you with an update on those challenges. We are still progressing proactively both here and overseas a number of criminal investigations still involving the execution of warrants and numerous inquiries and hearings using the coercive powers. We are, of course, assessing the cases that we are pursuing on a daily basis to look at how to better assess the future cases. We are learning as we go along. I am part of a joint CEO group, which consists of the CEOs of the other agencies involved in the joint operation, to look at ensuring that this investigation is conducted appropriately and that we get the desired outcomes. Michael might be able to provide you with further details.

Mr Outram—Yes, there is a joint management group at operational level that oversights the conduct of operations—we can do the criminal investigations—and that includes me and a senior representative of the Australian Tax Office. In an advisory capacity also there is the Commonwealth Director of Public Prosecutions. One of the biggest areas of focus on Wickenby has been the civil litigation that has been brought—and the Australian Federal Police, I should mention. Extensive civil litigation has been brought. We succeeded in defending all of that litigation up to the High Court level. We have a legal team to coordinate the response through the Office of Legal Services Coordination in the Attorney-General's Department. Obviously we occasionally brief the Australian Government Solicitor's office and we have been using an array of very amply qualified counsel in certain areas.

To date we are very satisfied with the conduct of the litigation. Litigation is ongoing, of course: it is not stopped. There is clearly a concerted strategy, if I might put it like that, in Wickenby around the use of civil litigation, and we have to deal with it. We currently have four matters relating to Operation Wickenby listed for argument. I will not mention the details. Some of the issues and their potential outcomes are still significant, and we are planning the way ahead. The challenges so far have focused on issues that include things like the validity of summonses that we have issued to witnesses, so around the examinations; the validity of the money-laundering and tax fraud determination—that determination was made by the board—and the instruments around it; the constitutional validity of the Australian Crime Commission Act, in particular section 4A—that matter went to the High Court; and the execution of search warrants that the ACC obtained pursuant to the Crimes Act.

There is an array of different areas of the ACC act that have been put under the spotlight—you might put it that way. As Mr Milroy mentioned earlier, the robustness of our legislation so far has shown through. These are complex matters. We have been involved in mutual assistance and receiving information and evidence from a number of overseas jurisdictions. We have matters

currently in court today, as Mr Milroy has mentioned—we cannot comment on them and other prosecutions pending—in Queensland.

CHAIR—I think you have told us before that there has been a significant amount of money already recovered. Is that right? Can you update that?

Mr Outram—In relation to Wickenby, some proceeds of crime action has been taken in Queensland. Without going into too much detail, there have been some legal issues around it that relate primarily to the conduct of proceeds of crime action under civil law, civil restraint and simultaneously conducting a prosecution. It has created some issues in law that I understand the Commonwealth Director of Public Prosecutions are looking at at this time.

CHAIR—Are there any other questions arising out of that? Well done on Wickenby. I know it has drawn varied comment over time, but it seems to be going well. Congratulations. I hope it is not too early, but regardless of the outcome there have already been successes to date.

I again thank you all for attending and for your time and assistance during the course of the inquiry. From the committee's point of view, we certainly hope that the results of the inquiry will be of assistance to law enforcement agencies generally and to the Australian Crime Commission in particular in their ongoing good work. I thank all of the witnesses who have attended this hearing today. The committee will now consider the evidence and report to the parliament. Thank you very much.

Mr Milroy—Chair, may I raise one point?

CHAIR—Sure.

Mr Milroy—If it would assist the committee, we could provide the committee with an explanatory diagram that might show the CrimTrac database and ACID and the current functions that they perform and how this connectivity issue works.

CHAIR—That would be very useful. I think we are all struggling to understand that.

Mr Milroy—We will work with our CrimTrac partners and provide something to the committee as soon as possible.

CHAIR—That would be excellent. Thank you once again.

Committee adjourned at 12.26 pm